

## Country Safeguards Review: Indonesia Consultation Draft

### Appendix 10: Acceptability Assessment for Involuntary Resettlement Safeguards

March 2017

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## ACCEPTABILITY ASSESSMENT FOR INVOLUNTARY RESETTLEMENT SAFEGUARDS BY REGULATORY BODIES

### A. Context

1. The acceptability assessment findings are presented in two Appendixes: 10 and 11. This document (Appendix 10) examines the capacity of regulatory bodies responsible for involuntary resettlement. Appendix 11 examines the capacity, and practice, and performance of TA-relevant sectors.

### B. Overview of Land Acquisition Practices in Indonesia

#### 1. Introduction

2. The Government of Indonesia (GOI) enacted Law 2 of 2012 on Land Acquisition for Development for the Public Interest (Land Acquisition Law) for acquiring land for public use activities together with the implementing regulations.<sup>1</sup>

3. The Land Acquisition Law provides clear, time-bound procedures with the objective to accelerate land acquisition. The scope of application of this law, however, is limited to eminent domain for public projects. Any private sector project involving land acquisition is still subject to prior policies, laws, and regulations, unless the government specifically designates the project to be a development project in the public interest, as regulated in the Presidential Decree (Perpres) 30 of 2015.

4. Law 2 of 2012 has significantly improved Indonesia's country safeguards system (CSS) for involuntary resettlement by providing greater protection for the rights of property owners through requirements on stakeholder consultation and involvement as well as through feasible and just compensation or indemnification. Law 2 of 2012 provides several forms of compensation including resettlement of displaced property owners. Although the law deals with compensation for non-titled property holders where land acquisition is required, it cannot be applied to cases where there is no acquisition, such as when the land is publically owned. In such cases, the land would be cleared according to Law 5 of 1960, of which Article 18 states very clearly that land may be expropriated or taken by the government for public use activities by providing reasonable compensation in accordance to the procedures stipulated in the law, which compensate other assets.

5. Under Law 2 of 2012, preference of the form of compensation is cash compensation instead of resettlement. When resettlement is selected as a form of compensation, technical guidelines for preparing, implementing, and managing a resettlement program need to be improved in order to meet the national standard and best international practices<sup>2</sup>.

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<sup>1</sup> The implementing regulations are: Presidential Decree (Perpres) 71 of 2012, which has been amended by Perpres 40 of 2014, Perpres 99 of 2014, Perpres 30 of 2015 and the most updated one, Perpres 148 of 2015; Minister of Finance Decree 13/PMK.02 of 2013 and 246/PMK.06 of 2014; Minister of Home Affairs Decree 72 of 2012; and Head of Land Office Decree 5 of 2012 and 6 of 2015.

<sup>2</sup> Directive policies were developed and issued for specific projects with special conditions. In 2005, Gol has issued President Regulation No. 1 Year 2015 to address and manage social community impacts resulting from Jati Gede Reservoir development. Previously, West Java Government issued a Decision No. 61.1/Kep.1086/AdmRek/2012 in

6. The agencies or institutions that are eligible to acquire land through Law 2 of 2012 are any state, institution, ministry and non-ministry government institution, provincial government, district or city government, and state-owned legal entity/state-owned entity that are specially assigned by the Government.<sup>3</sup> The government can also acquire land by establishing cooperation with state-owned enterprises, regional government owned enterprises, and private enterprises (public-private partnership).

## **2. Land Acquisition Process in Accordance with Law 2 of 2012**

7. The land acquisition stages as regulated in the law are: planning, preparation, implementation, and results delivery. The law specifies the institutions responsible for each stage. Figure A.10.1 illustrates the stages of land acquisition and the timing defined for each step. Figure A.10.1 also accounts for the provisions of Presidential Decree 148 of 2015, which has reduced the time needed for the land acquisition process to enhance the development of infrastructure. Details of each stage of the land acquisition are further elaborated below.

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September 11, 2012 to address environmental and social issues resulting from land acquisition and displacement of Jati Gede. However, the attempts failed due to MoF blocked the budget. In the case of Normalization of Ciliwung River, Governor of Jakarta issued a Governor Regulation No. 163/2012, which gives the Provincial Government of Jakarta to implement land eviction. For Ciliwung River Normalization, however, implementation of the directive policy has been challenged by some displaced persons. The land eviction implementation has been accused violating the rights of displaced persons.

<sup>3</sup> Beside Law 2 of 2012 and its implementing regulations, there are other regulations related to the land acquisition and resettlement for public interest, such as Presidential Decree 40 of 2016 concerning the Acceleration of the Development of Electricity Infrastructure, which has significant aspects in reducing the time of land acquisition process and determining the location. This would be discussed more in the section on Energy Sector, Appendix 11.

Figure A.10.1: Time Frame of Land Acquisition Stages in Indonesia

No	Steps of Activities	Time Frame	
		UU 2 of 2012, Perpres 71 of 2012 (number of days)	UU 2 of 2012, Perpres 148 of 2015 (number of days)
<b>I</b>	<b>Planning Phase</b>		
1	Preparation of land acquisition and submission to Governor	No time frame	No amendment
<b>II</b>	<b>Preparatory Phase</b>		
1	Establishment of land preparatory team by Governor; Delegation of authority to Regent/Mayor and; Establishment of preparatory team	10 No time frame	2 10
2	Notice of development plan, preliminary identification of land acquisition objects	50	33
3	Consultations and re consultation if any complaint/disagreement	60–90	60–90 No amendment
4	Grievance handling by Governor and Courts	14 - 88	3 - 88
5	Issuance location determination and announcement	14	7
<b>III</b>	<b>Implementation Phase</b>		
1	Establishment land acquisition implementation team (LAIT), delegation of authority for land acquisition, establishment of task force in LAIT	No time frame	4
2	Inventory of loss (land acquisition objects), announcement, data verification, mobilization of appraiser, valuation by appraiser	104–132	104–132 No amendment
3	Invitation and implementation of deliberation/consultation	35	32
4	Grievance handling	88	88 No amendment
5	Compensation payment , release of land rights,	14	14 No amendment
<b>IV</b>	<b>Handover of Acquired Land</b>		
1	Handover of acquired land	7	3
2	Certification	30	30 No amendment

Source: Law 2 of 2012 on Land Acquisition for the Development of Public Interest, Presidential Regulation 71 of 2012 on Implementation of Land Acquisition for the Development in the Public Interest and Presidential Regulation 148 of 2015 on the Fourth Amendment for the Presidential Regulation 71 of 2012.

8. **Planning Stage.** In this stage, the agency needing land shall make a Plan of Land Acquisition in the Public Interest in accordance with all applicable laws and regulations. Specifically, preparation of the plan shall refer to laws on regional planning, spatial planning, as well as to the development priority as stated in the National Medium – Term Development Plan, the Country Strategic Plan, as well as the Working Plan of relevant agencies.

9. The Land Acquisition Plan in the Public Interest Document should contain: (i) objectives and purpose of the development plan; (ii) a statement on its consistency with the Regional Spatial Plan and the National or Regional Development Plan; (iii) location of the land; (iv) size of the land needed by the project; (v) a general description of the land status; (vi) the estimated

period of the implementation of land acquisition; (vii) the estimated period of the implementation of construction; (viii) estimated land value; and (ix) a budget. The plan shall be prepared under a feasibility study made in accordance with the laws and regulations. The last step of the stage is submission of the Land Acquisition Plan in the Public Interest Document to the governor with complete supporting documents.

10. There is no time limit for an agency to prepare the Land Acquisition Plan in the Public Interest Document during the planning stage. The studies for the Karian Dam Project, for example, had been carried out since the 1990s under the supervision of the DGWR. The feasibility study for the entire Palindra Toll Road project, by contrast, was done in 2012 under the supervision of Bina Marga South Sumatra Province, although the project was moved under coordination of the central government.

11. The MASP/NLA indicates that most of Land Acquisition Plan (LAP) documents are still weak. Most of the documents are not prepared based on good feasibility studies and do not describe sufficient information on land acquisition planning as required by the land acquisition law and regulations. While, the quality land acquisition plan document will affect to a smooth land acquisition implementation. In the case studies examined during this assessment, the LAPs have been based on the feasibility studies, yet the content of the documents still need to be improved. For instance, the planning document of the 500kV Central Java TL and Power Station (Sutet and Gitet), Cilacap, Central Java incorporated the feasibility study including socioeconomic and environmental impacts of the project in the ANDAL document of the project, not as separate document.

12. There are several factors contributing to the low quality of the land acquisition planning documents. Often, land acquisition teams lack comprehensive and high-quality feasibility studies, as are required by law. As a result, the data provided in the planning documents are insufficient for informing implementation of the land acquisition plan. In addition, staff who are handling land acquisition tend lack of knowledge of land acquisition law and regulations, and consultants supporting the preparation of land acquisition documents often exhibit weak capacity. This situation further contributes to the poor quality of the planning documents and, in turn, affects the process of preparation and implementation of the land acquisition.

13. **Preparation Stage.** In the preparation stage, the responsible stakeholders for the activities are the agency that needs the land and the local government. After the agency submits the Land Acquisition Plan in the Public Interest Document, the governor establishes a project preparation team. This team, under governor instruction, implements preparation steps, the output of which is the issuance of the determination of location (*penetapan lokasi*) by the governor or regent (depending on the project scope). The steps of this stage are:

- (i) Giving information about the planned development;
- (ii) Collecting initial data on the planned development;
- (iii) Public consultation concerning the planned development;
- (iv) Development of the study team;
- (v) Determination of location (*penetapan lokasi*);
- (vi) Disclosure of the *penetapan lokasi pembangunan*: printed and placed at the *Kelurahan* office and announced in local papers and via electronic media; and
- (vii) State administrative lawsuit.

14. The preparation stage is critical in land acquisition. The issuance of the *penetapan lokasi* requires agreement of the entitled parties and affected communities. Agreement should be provided by all entitled parties in writing. In many cases, the agency needing land has already

been in close coordination with the local government from the planning stage in order to streamline the preparation process and to minimize rejection of entitled parties or affected communities. In the four studies, complaints raised by people were resolved at the local level. Complaints raised by affected people for the *Normalisasi Kali Ciliwung* project that are being processed in the court are mostly related to the DKI government's handling of relocation of the affected persons who have no land legal title.

15. Local governments apply different practices to guarantee that all steps would be achieved within the time limit. For example, Banten Province issued Governor Regulations (Pergub) No. 93 of 2014 for land acquisition of more than 5 hectares (ha), and Pergub 72 of 2014 for land acquisition of less than 5 hectares to anticipate the strict timeline stipulated by Law 2 of 2012 and Perpres 71 of 2012.<sup>4</sup> The governor's office is aware that following all the procedures of land acquisition will help them avoid lawsuits by the affected parties through the Administrative Court.

16. In accordance with a Governor Decree, the Land and Coordination Division in the Banten Setda Office has to review any planning documents before they are submitted to the governor, since the timeframe from the submission of the documents and establishment of the land acquisition preparation team is very limited. This review is to ensure that the document that will be submitted to the governor has met the requirements and the time needed for the review by the Governor office is sufficient.

17. Unlike in Banten Province, special provincial and local regulations were not developed for the Palembang Indralaya Toll Project in South Sumatra. However the governor implemented a good practice by closely monitoring its progress and holding regular coordination meetings with all stakeholders involved in the project under a Task Force<sup>5</sup> to accelerate the preparation of the land acquisition and to ensure that the project runs on schedule. It seems that implementing the good practice of interagency coordination can effectively speed up activities to be delivered in the preparation stage.

18. For the energy project, the Central Java Provincial Government issued Governor Regulation 18 of 2013 on Implementing Guidance of Land Acquisition for Public Interest, which has since been amended by Governor Regulation 60 of 2013<sup>6</sup>. These regulations are intended to explicate operational guidance for the Government in acquiring land for public use in Central Java. The provincial government has also established a general land acquisition preparation team in accordance with Law 2 of 2012 under the Governor Decree (*Surat Keputusan Gubernur*) 590 of 24 of 2013 dated 13 May 2013. The team is responsible not only for the particular case study project but also for the land acquisition process for projects in the province.

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<sup>4</sup> Some local governments expect that the requirements for *penetapan lokasi* for acquisition of less than 5 hectares of land to be more clearly stipulated in the regulation. For energy projects, for example, *penetapan lokasi* are clearly required under Presidential Regulation 4 of 2016 concerning Acceleration of Power Development, which clearly stipulates that for land acquisition less than 5 hectares, *penetapan lokasi* is not required.

<sup>5</sup> Satuan Kerja – Satker which was consist of the Ministry of Agrarian and Spatial Planning-National Land Agency (MASP-NLA) Provincial Office, Highways (Bina Marga) Provincial office, Regional Planning Agency (Badan Perencanaan Daerah – Bappeda Province), and the assigned contractor, PT Utama Karya

<sup>6</sup> Regulation of the Governor of Central Java Number 60 of 2013 on Changes to the Governor of Central Java No. 18 of 2013 on Technical Guidance on Preparation of Procurement Land for Development for the Public Interest (Peraturan Gubernur Jawa Tengah Nomor 60 Tahun 2013 tentang Perubahan atas Peraturan Gubernur Jawa Tengah Nomor 18 Tahun 2013 tentang Petunjuk Teknis Pelaksanaan Persiapan Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum)

19. Although efforts have been taken by the agency needing land and the local government to accelerate the land acquisition process, many projects still experienced delays in land acquisition preparation. To accelerate the process, Presidential Regulation 148 of 2015 regulates the timeline for delegating authority to a regent or mayor and for establishment of land acquisition preparation team.<sup>7</sup> The regulation also accelerates the timeline for grievance response by the governor from 14 working days to 3 working days.

20. **Implementation Stage.** MASP/NLA is the agency primarily responsible for the land acquisition activities in the implementation stage, although this responsibility may be delegated to the district land office.<sup>8</sup> Based on development location determination, agency needing land shall propose the land acquisition implementation to the head of land administrator. Implementation of land acquisition is conducted by the Land Acquisition Committee (LAC) established by the regional MASP/NLA. The output of this stage is the compensation payment and the Land Release to the land office. The steps of this stage are:

- a. Inventory and identification of possession, ownership, use and utilization of land, including:
  - (i) Preparation of land acquisition implementation activities
  - (ii) Development of the land acquisition implementation team;
  - (iii) Establishment of a task force for the inventory and identification of land acquisition objects;
  - (iv) Carry out the inventory and identification of land acquisition objects by task forces;
  - (v) Announcement of the inventory and identification results of land acquisition objects;
  - (vi) If any objection, verify the inventory and identification result and make necessary corrections;
- b. Appraisal of compensation, including:
  - (i) Mobilization of land appraiser or public appraiser;
  - (ii) Valuation of land acquisition compensation of each land plot;
- c. Negotiation on determination of compensation, including:
  - (i) Deliberation of compensation form with the entitled party(s) based on the appraiser result; If the entitled party(s) do not agree with the compensation amount/forms, they may file grievance to the court;
  - (ii) If there is no agreement on the compensation, the entitled party(s) may file an objection to the District Court and the Supreme Court. A final and binding decision of the District Court or the Supreme Court shall constitute the ground for payment of compensation to the party(s) filing an objection;
- d. Giving of compensation payment in the form of either money, land replacement, resettlement, shareholding, or other forms as agreed by both parties;
- e. Disposition of the agencies' land

21. Consultation and discussion with MASP/NLA indicate that the agency needs to complete the technical implementation guidelines with regard to land substitution for acquisition of government land and/or state land to complement its existing ones issued in *Peraturan Kepala* (Perka) BPN No. 2/2012 and MASP/NLA Regulation No. 6/2015. Another demand for

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<sup>7</sup> Presidential Regulation 71 of 2012 does not stipulate the timeline for the delegation of authority from governor to regent or mayor and establishment of land acquisition, while the Presidential Regulation 148 of 2015 stipulates 10 working days for delegation of authority and establishment of land acquisition preparation team. There is no amendment for activities related to the entitled parties or affected communities including notice of development plan, preliminary identification of and acquisition objects, and consultations. Presidential Regulation 71 of 2012 on Implementation of Land Acquisition for the Development in the Public Interest; and Presidential Regulation 148 of 2015 on the Fourth Amendment for the Presidential Regulation 71 of 2012.

<sup>8</sup> Per the Head of Land Office Decree 2 of 2013 on the Delegation of Authority for Land Rights and Land Registration Activities.



MASP/NLA implementing regulation is related to involuntary resettlement/relocation management. Under Law No. 2/2012 and President Decree No. 7/2012, relocation is offered as one of several forms of compensation. Broad principles for housing and settlement development have been issued in the Law No. 1/2011 on Housing and Settlement development. Some technical guidelines to manage involuntary resettlement are issued through a Minister Solicited Letter (*Surat Edaran Menteri*). For example: Surat Edaran of the Ministry of Public Works and Housing (PUPR) No. 12/SE/M2014 dated 24 December 2014 included an annex of technical guidelines pertaining to environment, land acquisition and resettlement, and Indigenous Peoples. However, the need to have technical guidelines for planning, preparing, implementing and monitoring resettlement resulted from land acquisition/involuntary resettlement has been confirmed by MASP/NLA.

22. An individual or group of independent appraisers carries out the valuation of compensation during the implementation stage. As regulated in Law 2 of 2012 and its supporting regulations, the valuation of the compensation should be done by “Independent and Professionals Appraisers who have license from Ministry of Finance as Public Appraiser and registered in National Land Institution (BPN).” The Indonesian Society of Appraisers (*Masyarakat Profesi Penilai Indonesia*, MAPPI) has issued Valuation Standard 306, Valuation in the Context of Land Acquisition for Development for Public Interest, in response to Law 2 of 2012. The standard has the same principles the land acquisition law principles of justice and the Asian Development Bank (ADB) 2009 Safeguard Policy Statement (SPS), which determines that the amount of compensation is based on the principles of humanity, fairness, usefulness, certainty, transparency, agreement, participation, welfare, harmony, and sustainability.

23. **Valuation of Compensation.** The most critical issue in land acquisition is compensation. The amount of compensation is associated with the valuation of land acquisition objects. In the past, the valuation of land was based on the government tax assessment value (*Nilai Jual Obyek Pajak – NJOP*), which is much lower than the land market rate.<sup>9</sup> The Presidential Regulation 65 of 2006 on Land Acquisition for the Development in the Public Interest stipulates that independent appraisers are involved to calculate compensation, but such was limited to lost land. Compensation for structures and trees/plants were based on the Pricing Standard on Building and Plants, issued by the local government.

24. Law 2 of 2012 on Land Acquisition ensures replacement value for the compensation so that the entitled parties losing their land and non-land assets for the project are able to live better. The law states that compensation should be reasonable and fair compensation should be given to the entitled party in exchange for land acquisition.<sup>10</sup> The principle of justice under the law emphasizes that land acquisition guarantees any reasonable reward or compensation to the entitled parties so that they have opportunity to live better.<sup>11</sup>

25. The land acquisition objects for the compensation include physical and economical

<sup>9</sup> The Ministry of Finance who issued the NJOP had warned that NJOP is used only for tax purposes and it will not be responsible for its misuse or use for other than tax purposes. In Act 12 of 1985 and as amended in Act 12 of 1994 on Property Tax-Pajak Bumi dan Bangunan, Article 6 (1) clearly states that NJOP is the tax base. Similarly, in Act 21 of 1997 to Act 20 of 2000 Article 6 (3), NJOP used as bases for cost of acquisition for land and buildings (*Biaya Perolehan Hak atas Tanah dan Bangunan-BPHTB*). BPHTB is a tax imposed for acquisition of land or buildings. But some government institutions used the rate of land and building according to NJOP as the benchmark for any transaction including for Land Acquisition for Public Use. Act 12 of 1985 as amended by Act 12 of 1994 on Property Tax-Pajak Bumi dan Bangunan.

<sup>10</sup> Law 2 of 2012 on Land Acquisition for the Development in the Public Interest, Article 1, General Provision.

<sup>11</sup> Law 2 of 2012 on Land Acquisition for the Development in the Public Interest, Article 2, Principles and Objectives.

losses:<sup>12</sup>

- i) Land
- ii) Space above and underground
- iii) Buildings
- iv) Plants
- v) Objects attached to the land; and/or
- vi) Other losses that can be assessed. Other appraisable loss means nonphysical loss equivalent to money value, for example, loss due to lost business or jobs, moving cost, profession change, and remaining assets value.

26. The above provisions are consistent with valuation concept in the compulsory land acquisition. In the valuation concept of compulsory land acquisition, the buyer (in this case, the government) has to pay higher than the market value. And the seller (the entitled parties or property owners) do not release the land acquisition objects unless proper compensation is received. This law automatically eliminates the use of NJOP (tax assessment value), which has been an obstacle to provide proper compensation to land owners in the past.

27. The Land Acquisition Law mandates the appraiser to determine the amount of compensation at the time of announcement of the location determination (*penetapan lokasi*). Violation of this obligation shall make the appraiser liable to administrative sanction and/or criminal sanction. If there is delay in the delivery of compensation payment, the compensation amount has to include the cost of delays.

28. As noted above, the Indonesian Society of Appraisers (MAPPI) has established a regulatory framework for valuation of compensation: Valuation Standard 306, "Valuation in the Context of Land Acquisition for Development for Public Interest." The standard was developed in line with the principles of the land acquisition law (principle of justice) and the Asian Development Bank (ADB) 2009 Safeguard Policy Statement (SPS).

29. The MAPPI Valuation Standard 306 emphasizes fair replacement value (*nilai penggantian wajar*), meaning the value for the benefit of the owner which will be based on the market value of a property, with special attention to elements of non-physical losses of property ownership caused the taking of property rights<sup>13</sup>. The MAPPI standard includes a valuation method for compensation for physical and nonphysical loss. Physical loss includes land, space above and underground, buildings, and plants, while compensation for nonphysical loss includes the following:

- (i) Compensation on disposable rights of landowners, which will be given a premium, and which are measured in terms of money under the provisions of the legislation in force. The substitutions may include matters related to: (a) loss of a job or the loss of business, including change of the profession (with respect to Law 2 of 2012, Article 33 (f) of the elucidation); (b) emotional loss (*solatium*), which is an intangible losses associated with the acquisition of land use as the residence of the owner (with due regard to Law 2 of 2012, Article 1 paragraph 10; Article 2 of the elucidation; and Article 9, paragraph 2).
- (ii) Cost of transaction, which may include moving expenses and corresponding taxes.
- (iii) Compensation for the waiting period for the time difference between the valuation

<sup>12</sup> Law 2 of 2012 on Land Acquisition for the Development in the Public Interest, Article 33. See also Elucidation of Article 33 9f) of the Law 2 of 2012

<sup>13</sup> Standar Penilaian Indonesia 306 (SPI 306), Penilaian Terhadap Pegadaan Tanah bagi Pembangunan untuk Kepentingan Umum. KEPI & SPI Edisi VI, 2015. Jakarta, Masyarakat Profesi Penilai Indonesia (MAPPI).

- date and the estimated payment date.
- (iv) Loss of the remaining land, which is the decline in the value of land as a result of retrieval of most of the ground plane. If the remaining of the land can no longer function as intended, it can be calculated over the entire land value.
  - (v) Physical damages, if parts of the building were cut off as a result of land acquisition and costly repairs have to be carried out to restore functionality.

30. *Comparison with ADB's Safeguard Policy.* The policy principles in the Safeguard Policy Statement (SPS) of the Asian Development Bank (ADB) related to valuation of compensation is "... to improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible."<sup>14</sup> The principles of compensation in Law 2 of 2012 and its related regulations are in line with ADB policy. The Fair Compensation Value in the Indonesian Valuation Standard (SPI 306) also has a similar concept, but the scope on the valuation standard is limited only for cash compensation and not for relocation. The scope and valuation method set forth in the SPI 306 is the following:

Table A.10.2. Valuation Objects and Approach Set Forth in the SPI 306

Valuation Object	Basis of Valuation	Valuation Approach	Notes
<b>Physical:</b>			
· Land	Market Value and Non Market Value	· Market Approach · Income Approach	
· Building	Adjusted Replacement Cost	· Cost Approach	Depreciation only for adjustment of physical condition, although in practice no depreciation is applied. If any depreciation, this would be returned for the premium
· Plant	Market Value	· Income Approach	Discounted cash flow for one cycles
		· Market Approach	For non-commercial crops, using reference from related government institution
		· Cost Approach	For immature plants
<b>Non Physical:</b>			
· Transaction Cost	Moving expenses and corresponding taxes	· Cost Approach	Based on Social Economic Study by Expert or based on regulation
· Payment Schedule	Risk free rate or Time Deposit Rate of State Bank		Based on existing regulation if any
· Remaining Land	Market Value	· Market Approach	Based on existing regulation if any
· Other Physical Damages	Cost of Repairmen	· Cost Approach	Based on existing regulation if any
· Compensation to the landowner due to compulsory acquisition which considered as premium:		· Income Approach · Cost Approach	Based on existing regulation if any

<sup>14</sup> ADB. 2009. *Safeguard Policy Statement*. Manila.

a. Loss of job or business, including change of profession	Market and Non Market		Economic damage cause by closing of the business, for example: farming, fishery, restaurant, workshop
b. Emotional Loss (solatium)	Additional loss that calculated % of the physical loss, for example: 10% - 30% from physical loss		

31. **Valuation Issues.** In practice, coordination among the land office, the agency needing land, and the appraiser should flow smoothly to achieve the expected results of the implementation stage, which are the compensation payments and the land release to the land institution (MASP/NLA). A report of an appraiser involved in the implementation stage with the land office identified typical problems during this stage.

- (i) *Data of the Asset.* The data are either not ready on time, incomplete, still need to be corrected even after the valuation process, or inconsistent with the real conditions. Correction of data takes time; the process for doing so is complex and requires a re-inspection by BPN and other government officers. The mapping of an area may also not fully describe the condition of each land plot, but rather only identify the land plots to be acquired. This is misleading to the valuation as the condition of the area will affect the valuation result.
- (ii) *Date of Valuation (the date of issuance of location confirmation).* In some cases, the date is not confirmed. In other cases, the location confirmation is issued long before the appointment of the appraiser, and so the valuation is out of date and may be significantly different from current market conditions. Such a situation affects the acceptability of the compensation value. There should be a provision allowing the re-issuance of the Notice of Location Decision.
- (iii) *Time Frame of the Valuation Process.* According to the regulation, the maximum time frame for the valuation process is 30 days, but in cases with a large land area with many parcels of land it is very difficult to meet the deadline. The deadline will only be reasonable if all data required are available
- (iv) *Payment Schedule.* The time lag between valuation date and payment of the compensation is one of the items calculated as nonphysical loss. The monetary value of that time lag is based on government bond rate or fixed deposit rate of state banks. Payment delays typically occur due to: (a) landowners who disagree with the compensation value; (b) landowners who disagree with the data of the asset provided by the land office; and (c) the funds available are insufficient to pay all the compensation because the budget allocation for compensation is too small
- (v) *Socialization of Value.* There are cases where landowners are provoked by community leaders to try to get higher compensation although the valuation has been done properly. Communication with community leaders is very critical to ensuring acceptability of the compensation value
- (vi) *Property Market after Land Acquisition.* This refers to an abnormal market caused by a very high demand for properties, which significantly boosts the property price. Because of the increase in property price, the compensation received by a landowner would not suffice to purchase a similar property. The valuation standard did not mention any premium regarding price changes. Most appraisers do not consider this condition in their valuation, although some consider this based on their understanding of principles of welfare in accordance with Law 2 of 2012. The valuation standard should clearly include the price changes to be considered in the compensation valuation
- (vii) *Remaining Land.* Data from MASP/NLA are supposedly not only for the land that will be acquired but also the remaining land area that cannot be utilized since this will also be

- compensated. However, appraisers usually do not have information about the parcel includes the remaining land area.
- (viii) *Right-of-Way Compensation.* The compensation for 15% of the market value for land for transmission line project will only be applicable for agricultural land used for farming. In plantations with perennial crops, there may be total loss, because the owners can no longer utilize the land since cultivating plants that are more than 6 meters high will not be allowed. In such case, loss of trees or plants within the right-of-way has to be compensated. The Minister of Energy and Mineral Resources Regulation 38 of 2013 defined the formula for compensation, which is 15% of the market value for land and building and 100% of the market value for plants.

32. *The MASP/NLA Team.* One issue is the limited personnel that conduct land surveys and measurements, which delays the implementation stage so that acquisition cannot be completed within the time limit. Meanwhile, the awareness and understanding of the BPN Team of the importance of data and the impact of data in valuation also needs to be upgraded. Communication between the Appraiser and BPN Team is very important for the success of this process.

33. *Availability and Capacity of Independent Appraisers.* All appraisers in Indonesia have to be members of MAPPI. In 2015 MAPPI had more than 6,000 members, which could be considered as the number of total appraisers in Indonesia. The membership has almost doubled since 2012 when Law 2 of 2012 was approved.

34. The increase in the number of MAPPI members may have been due to an increased interest in becoming appraisers. Appraisers Courses organized by MAPPI have become very much in demand, that there is a waiting list for it. In addition, many government institutions have submitted requests for valuation trainings.

35. Although the number of appraisers has increased significantly, the ratio of appraisers to the general population is very small. Indonesia has 24 appraisers per one million people. In comparison, Malaysia has around 45 appraisers per one million people, while Singapore has over 120. The problem is not only the quantity of appraisers but also in their geographical distribution. Appraisers are more concentrated in Jakarta, Bogor, Depok, Bekasi, and Tangerang (Jabodetabek), which as a combined area accounts for more than 80% of the total appraisers in Indonesia.

36. Valuation of compensation is considered to be a new subject for Indonesian appraisers. MAPPI publishes the standards for valuation and compensation and also conducts training and dissemination of the new standards. Over 500 members have been trained in this new standard.

37. For land acquisition less than 5 ha, the land acquisition can be done directly between the agency needing the land and land rights holders through purchase or exchange or other means as agreed by both parties. However, such land acquisition can be done also using procedures set in the land acquisition law. If using the land acquisition law, the appraisers will value the land in accordance with the law with a greater value than the value of direct purchasing that refers to the market rate. The gap of the land values has previously led to allegations of corruption. The government auditor (BPK) is of the view that land valuation for land acquisition less than 5 hectares should refer to the market rate, while the valuation result by appraisers is higher than the market rate.

38. **Submission of the Result Stage.** The provincial land office (or the district one if

delegated) is responsible for the submission of the result of valuation. The output of this stage is the handover of the land to the agency that needs it by the land office. The main activities in the stage are the development of the minutes of the meeting (*Berita Acara*) and the Land Certificate Application.

39. **Monitoring and Evaluation.** Based on Law 2 of 2012, the land office is responsible for monitoring the land acquisition process. Monitoring in this case only covers the land acquisition process including implementation and the submission of the land acquisition result to the agency that needs the land. The scope of the monitoring does not include the land acquisition impacts to the affected persons or entitled parties. The law does not require disclosure of the land acquisition monitoring report.

### C. Summary of Issues in Indonesia's CSS for Involuntary Resettlement

40. A review of the equivalence of the Indonesian legal framework against the ADB SPS was done under the ADB capacity development technical assistance to Indonesia for Aligning Asian Development Bank and Country Systems for Improved Project Performance.<sup>15</sup> A total of 33 Indonesia legal instruments on involuntary resettlement were evaluated in comparison with the ADB SPS. Substantial equivalence was found between Indonesia land acquisition laws and the corresponding objectives, scope and triggers, and policy principles of ADB's SPS for involuntary resettlement (Appendix 6). Partial equivalence was found for some of the SPS policy principles.

41. In practice, the implementation of the land acquisition for public interest should not just use merely Law 2 of 2012 as reference; other sectoral laws are pertinent to ensuring equivalence with ADB SPS. Relevant issues addressed in other laws include: special support to vulnerable groups, support to the social and cultural institution of displaced persons and their host communities, compensation for lost assets and assistance in case of land clearing (land to be used by the project has been owned by the agency needing the land or project proponent), and disclosure of monitoring reports.

42. As indicated earlier, another challenge on land acquisition implementation is relating to land acquisition of government land or state land as the land acquisition implementation is often more complicated and takes a longer time. For example, land acquisition of forestry land will need to meet the Forestry permits with a lengthy process and the transfer of acquired government land to the agency needing the land also takes time.

43. In terms of providing compensation and assistance for non-land rights holders, the practices are posed with inconsistent implementations interpreted by concerned agencies. DKI Jakarta Government provides for compensation for non-land rights holders in the form of staying rent-free for 3 months and a reasonable rental fee thereafter as well as providing for livelihood restoration programs. Some other local governments permit physical displacement without any compensation. The safeguard assessment for irrigation projects identified that some projects (usually national projects) provided compensation to affected persons occupying government land (squatters), while other projects (local government projects) did not provide any compensation.

44. Protection or securing un-guarded government land, particularly in urban areas, from the

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<sup>15</sup> ADB. 2013. *Technical Assistance to Indonesia for Aligning Asian Development Bank and Country Systems for Improved Project Performance*. Manila (TA 8548-INO).

occupations of land encroachers is also a changeling issue for the government agencies interviewed. Guidelines to protect and prevent un-guarded government land to be occupied from illegal settlers are to be prepared to protect the concerned party.

45. The summary of issues in land acquisition process is outlined in Table A.10.1.

**Table A.10.2: Summary of issues in the land acquisition process**

No	Elements	Key Assessment findings
1	Process and Procedure	
A	Planning	<ul style="list-style-type: none"> <li>• Poor to moderate quality of most land acquisition plan documents because of lack of staff and consultant knowledge on land acquisition laws/regulations and no proper feasibility study.</li> <li>• Independent appraisers should be hired since the planning stage for many projects to get an idea of estimated cost of compensation so that the budget planning will be more accurate.</li> <li>• Coordination with the local government and regional land agency should be conducted since planning stage.</li> </ul>
B	Preparation	<ul style="list-style-type: none"> <li>• Some provincial governments issued Local Government Regulations to support the land acquisition process and to ensure land acquisition preparation is conducted in a timely manner.</li> <li>• Unclear policy on location determination for land acquisition of less than 5 hectares.</li> <li>• Knowledge of government auditors on recent legal framework on land acquisition is still weak and this affects the auditors' findings (allegation of corruption).</li> </ul>
C	Implementation	<ul style="list-style-type: none"> <li>• Limited personnel that conduct land and measurements, which delays the implementation stage.</li> <li>• Valuation issues including: <ul style="list-style-type: none"> <li>- Incomplete data on land acquisition objects, including remaining land</li> <li>- Most appraisers' lack of knowledge on land acquisition law and regulations</li> <li>- Limited number of appraisers and geographical concentration in Java</li> </ul> </li> <li>• Budget allocation is often less than necessary to pay compensation</li> <li>• Prolonged process of acquisition of government's land</li> <li>• Inconsistency in providing compensation and assistance for non-land rights holders</li> <li>• Occupation of acquired land (in urban areas) by new encroachers</li> <li>• Lack of the nationwide technical guidelines on resettlement development and management resulted from land acquisition for public interest development.</li> </ul>
D	Handover of Acquired Land	<ul style="list-style-type: none"> <li>• Prolonged process of handover of acquired government land</li> </ul>
E	Monitoring	<ul style="list-style-type: none"> <li>• Monitoring does not cover land acquisition impacts to the affected persons/entitled parties</li> <li>• Disclosure of land acquisition report is not required</li> </ul>





## **D. Review of Institutional Capacity at the National and Regional Levels**

To determine the institutional capacity of key government agencies, the assessment examined institutional structure and organization, budget, staffing, institutional knowledge and knowledge management, technical expertise, legal counsel, supporting equipment and facilities, capacity building programs, training centers (*Pusdiklat*), monitoring and evaluation, and achievement of outcomes.<sup>16</sup>

### **1. Ministry of Agrarian Affairs and Spatial Planning/National Land Agency**

46. Under the current administration, the former National Land Agency (NLA) was changed into the Ministry of Agrarian Affairs and Spatial Planning (MASP) and adjustments to the structure were carried out accordingly. At least two regulations have been issued to accommodate the institutional change: Presidential Regulation (Perpres) 17 of 2015 on the MASP and Perpres 20 of 2015 regarding the NLA.

47. Perpres 17 of 2015 established the new Directorate General (Dirjen) of Land Acquisition. The Dirjen is responsible for:

- (i) Formulating and implementing policy on land acquisition and land valuation
- (ii) Regulating and stipulating land for government institutions
- (iii) Advisory, and oversight on land acquisition
- (iv) Establishing and providing technical guidance and supervision on norms, standards, procedures, and criteria used in land acquisition, and land valuation
- (v) Evaluating and reporting on land acquisition, land valuation
- (vi) Implementing administrative functions of the Land Acquisition Directorate General
- (vii) Implementing other functions as directed by the minister.

48. Perpres 20 of 2015 generally stipulates provisions for provincial and district/city land offices as implementers of the policy established by MASP. Article 3 (e) states that the NLA is responsible for formulating and implementing policies on land acquisition for public use.

49. The capacity of MASP/NLA is rated strong as the institution has a Directorate General (Dirjen) of Land Acquisition and Directorate General of Spatial Planning. MASP/NLA has also a directorate supporting land acquisition, such as Directorate of Spatial Planning, Directorate of Valuation, and Center of Legal Study and Public Relations. MASP/NLA prepared the draft Land Acquisition Law with support of ADB through the Technical Assistance 7038 for Enhancing the Legal and Administrative Framework for Land.<sup>17</sup>

50. MASP/NLA is intensively involved in the government coordination for infrastructure development and also involved in the sector agency's task force for land acquisition. MASP/NLA has a program for capacity building improvement for staff of regional land offices. However, the program is not conducted regularly because of budget limitations. MASP/NLA, especially the

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<sup>16</sup> The acceptability assessment also builds on the environmental and social safeguards acceptability assessments from ADB's TA projects and ADB-financed projects including: (i) Strengthening AMDAL and Social Safeguards subproject financed under the TA for Strengthening and Use of Country Safeguard Systems; (ii) Program Safeguard System Assessment (PSSA) for Electricity Grid Strengthening—Sumatra Program (RRP-INO 49080); and (iii) PSSA of Integrated Participatory Development and Management of Irrigation Program (RRP I43220). The PSSA examines the safeguards system of Indonesia, including its implementation practices and capacities.

<sup>17</sup> ADB. 2007. *Technical Assistance to Indonesia for Enhancing the Legal and Administrative Framework for Land*. Manila (TA 7038-INO).

Directorate of Land Acquisition, often act as resources persons for capacity-building programs conducted by other government agencies and ADB's program. MASP/NLA both at national and regional level is the agency from which other government agencies seek the advice for land acquisition issues. However, a more intensive coordination among the sector agencies needing land and MASP/NLA needs to be strengthened to accelerate the land acquisition process. Currently, MASP/NLA has no comprehensive data on land needs and land acquisition progress for each sector, while having such data is very important for the MASP/NLA to support the acceleration of land acquisition implementation.

51. The number of MSAP/NLA staff at national level in 2016 is 19,965 persons. Of that number, 60% graduated from university (from diploma, bachelor, and post graduate), 33% graduated from high school, and the rest graduated from the secondary and elementary school in supporting the program of land registration and land acquisition. There are no issues in terms of human resources number at the national level as the roles are more for policy formulation and providing technical guidance for land acquisition, while land acquisition implementation is more handled by regional offices. However, given the strategic role for giving advice for land acquisition, the knowledge of the MSAP/NLA staff on land acquisition legal framework needs to be strengthened.

52. The technical guidance for land acquisition implementation as per the Head of MASP/NLA Regulation has been good. However, the technical guidance and template for the identification of land acquisition objects for compensation needs to be improved to capture the loss of business, profession change, moving cost, and other relocation assistances. Detailed and comprehensive data would be very helpful for the appraisers in carrying out the valuation.

53. In 2016, MSAP/NLA set out to recruit an additional 2,500 land surveyors, which would effectively more than double the current number of surveyor throughout Indonesia, which is 2,079 persons. However, these surveyors would be prioritized for land registration, while the need of land surveyor for land acquisition is increasing.

54. The MASP/NLA issued the Head of NLA Regulation 5 of 2012 on Implementation of Land Acquisition for Development in the Public Interest and it was amended with the Head of MASP/NLA Regulation 6 of 2015 on Change of Head of NLA Regulation 5 of 2012 on Implementation of Land Acquisition for Development in the Public Interest. However, some aspects in the technical guidance still need to be strengthened, including the template for the identification of the land acquisition objects (physical and economic losses) to accommodate other appraisable losses such as loss of business, jobs, profession change, and moving cost, etc. The institution has also intensively disseminated and shared information on land acquisition policies, especially to the regional land offices. In collaboration with ADB, through the TA 8661 (Stepping Up Investment for Growth Acceleration Program), the MSAP/NLA conduct training on land acquisition planning to the officials and staff of central government agencies, local governments, and State owned Enterprises in several regions. The MASP/NLA supported by ADB also conducted briefing on land acquisition legal framework and the progress of implementation to non-government organizations (NGOs). The MASP/NLA is also active in providing advice on the interpretations of the land acquisition law and regulations as well as in providing guidance on land acquisition implementation. However, the baseline data on land acquisition implementation is still weak and needs to be improved.

55. To optimize land acquisition implementation for the development of public interest, especially for national strategic development, in August 2016, the Minister of MASP/NLA issued an instruction on Acceleration of Land Acquisition. The instruction includes:

- i) To improve coordination among stakeholders, proactive in taking the solution for the raising issues, and develop database of land acquisition;
- ii) Monthly report of land acquisition implementation to the Minister. The Minister will report progress of land acquisition to the President;
- iii) Monitoring and evaluation for land acquisition implementation by the Directorate General of Land Acquisition of MASP/NLA;
- iv) Expert staff conduct direct evaluation on land acquisition and take solution to the raising issues.

## 2. Indonesian Appraisers Association (MAPPI)

56. A second national level entity with important responsibilities for land acquisition/involuntary resettlement, particularly given the new legal framework, is the Indonesian Society of Appraisers (Masyarakat Profesi Penilai Indonesia or MAPPI). It was established in 1981 as an independent, nonprofit professional organization with the goal of setting national standards, consistent with international best practice, for property valuation, and it is licensed by Ministry of Finance and MSAP/NLA. MAPPI also provides accreditation, certification, training and professional development to appraisers (also known as “valuers”) of land and other real property in Indonesia. MAPPI is internationally recognized for its professional approach to land valuation in Indonesia.

57. All appraisers in Indonesia have to be member of MAPPI. The total members of MAPPI in 2015 were more than 6.000 appraisers, similar with the total number of appraisers in Indonesia. This numbers has doubled from the number in 2012 when the Law 2 of 2012 was enacted. Currently, appraisal profession is in a great demand. Valuation courses organized by MAPPI are in high demand and many of applicants are wait-listed. Many government agencies also requested to be facilitated by MAPPI for valuation training.

58. Although the number of appraisers has increased significantly, their ratio to Indonesia’s total population is still low. Currently, it is only 24 appraisers per one million people and it is much lower compared to the neighboring country such Malaysia, which are 45 appraisers per one million people. Singapore boasts more than 120 appraisers per million people. The problem in Indonesia is not only in terms of quantity of the appraisers, but also of the distribution of appraisers. More than 80% of appraisers are in Jakarta and surrounding cities (Jakarta-Bogor-Depok-Tangerang-Bekasi or Jabodetabek).

59. The detailed data on the number of MAPPI members is outlined in the table below.

Table B. 10.3. Number of MAPPI Members

Member Status	2007	2008	2009	2010	2011	2012	2013	2014	2015
<b>Certified Member</b>	303	300	322	322	343	376	402	<b>441</b>	<b>461</b>
<b>Accredited Member</b>	981	880	884	884	952	977	1.158	<b>1.268</b>	<b>1.405</b>
<b>Associate Member</b>	822	554	726	858	946	1.143	1.557	<b>2.295</b>	<b>2.723</b>
<b>Affiliate Member</b>				68	520	906	882	<b>1.376</b>	<b>1.495</b>
<b>Honorary Member</b>	5	7	23	10	10	10	10	<b>10</b>	<b>10</b>
<b>Total</b>	<b>2.111</b>	<b>1.741</b>	<b>1.928</b>	<b>2.142</b>	<b>2.771</b>	<b>3.412</b>	<b>4.009</b>	<b>5.390</b>	<b>6.094</b>

### 3. Land Office, Provincial Level

60. The mandate of the provincial land office is to implement land acquisition in accordance with Law 2 of 2012. At the implementation stage of land acquisition, the head of the provincial land office has the authority to establish the land acquisition committee (LAC) composed of several technical agencies including the head of provincial MASP/NLA as a chairperson, head of land rights and land registration, sub district head, village head, and relevant agencies responsible for land acquisition. The LAC establishes the task force for land acquisition implementation. The task force consists of task force A, which is responsible for data on control, ownership, use, and utilization of land; and task force B, which is responsible for entitled parties and land acquisition objects. There is a section in the provincial land office responsible for land acquisition for government projects, which is under the government land regulation section (*Seksi Pengaturan Tanah Pemerintah*), under the Land Rights and Registration Division. The structure of the office follows the Minister Regulation (*Permen*) 8 of 2015 on Organization and Management of MASP/NLA.

61. The limited number of land surveyors in regional MASP/NLA offices causes delays in land acquisition implementation. In Banten, the limited land surveyor and the high demand to the regional MASP/NLA office to facilitate land acquisition implementation have caused delays in the land acquisition process.

62. The provincial land office has a guaranteed budget from the ministry to carry out its mandate on land acquisition in accordance with Law 2 of 2012. The office usually does not have adequate equipment and mobility to support its mandates independently. There is also no *Pusdiklat* or training center in their area, which means that, to improve staff's capacity, they would have to rely on trainings suggested by the central office in Jakarta.

63. To strengthen the land acquisition implementation, the MASP/NLA establishes specific division on land acquisition at provincial and district land offices equipped by staff, facilities, and budget.

### E. Review of Institutional Capacity among Key Sector Agencies

64. While MASP/NLA and MAPPI have overall institutional responsibility to implement land acquisition/involuntary resettlement, the sector-level agencies as institution needing the land have main role in land acquisition/involuntary resettlement planning. Their institutional capacity of sector agency depends upon the availability of "safeguard" units that are responsible for coordination with local government and MSAP/NLA.

#### 1. Ministry of Public Work and Housing (MPWH)

65. There are two directorates general under the MPWH which have specific unit for social safeguards, namely the Directorate General of Water Resources (DGWR) and Directorate General of Highways (DGH) or *Direktorat Jenderal Bina Marga (Dirjen Bina Marga)*. While at the Directorate General of Human Settlement (DGHS) and Directorate General of Housing (DGS), there is no dedicated sub-directorate for safeguards.

66. To implement the safeguards requirements, the safeguard units of DGWR and DGH collaborate with relevant implementing agencies (*Unit Pelaksana Teknis – UPT*) or *Balai Besar*

(DGWR regional offices responsible for project implementation). At *Balai Besars* of DGWR, land acquisition is the responsibility of the project manager (*PPK*) with support of some staff. The *Balai PPK* collaborates with the local government (Governor/*Bupati* Office), local planning office (*BAPPEDA*), and regional offices of the MASP/NLA to prepare and implement land acquisition.

67. The land acquisition budget is linked and included in the respective activities/project/program of directorate/unit/division as project owners. All Directorates General of MPWH allocate annual budget for land acquisition, especially for national and strategic projects. In 2015, MPWH allocated budget amounting to IDR 4.7 trillion for land acquisition. And of that amount, IDR 1.2 trillion was allocated for land acquisition in the DGWR. All *Balai Besars* have also annual budgets for land acquisition and environmental safeguards, but budget adequacy varies.

## 2. Directorate General of Water Resources (DGWR)

68. Under the Directorate General of Water Resources (DGWR), on the Secretariat of the DGWR, Ministry of Public Works and Housing (MPWH), there is a Country Assets Management and Land Facilitation Division. Within this division is the Land Facilitation sub-division, which is responsible for facilitating land acquisition for water resources development. The tasks of the sub directorate of land facilitation include i) preparing required materials for coordination of land acquisition with other related agencies; ii) providing technical guidance and assistance on land acquisition; iii) handling problems related to land acquisition for the implementation of water resources development projects including requirement permits at national level; and iv) facilitating protection and certification of the acquired land assets.<sup>18</sup> They receive a budget from the DGWR to implement their mandate. The pictures below show the organizational structure of the DGWR and the Secretariat of DGWR.

69. Since its establishment in July 2015, the Country Assets Management and Land Facilitation Division (social safeguard unit) has been active in identifying all lands to be acquired for strategic and national projects and ensuring that the projects have been included in the regional spatial planning. The division also supports DGWR in enhancing the capacity of the staff in land acquisition and resettlement by holding regular trainings, seminars, and workshops and inviting key speakers from its own ministry or from external organizations. They also develop and maintain good relationships with other government agencies involved in land acquisition such as the Ministry of Environment and Forestry (MoEF), the state-owned Forest Enterprise (*Perhutani*) and the National Land Office.

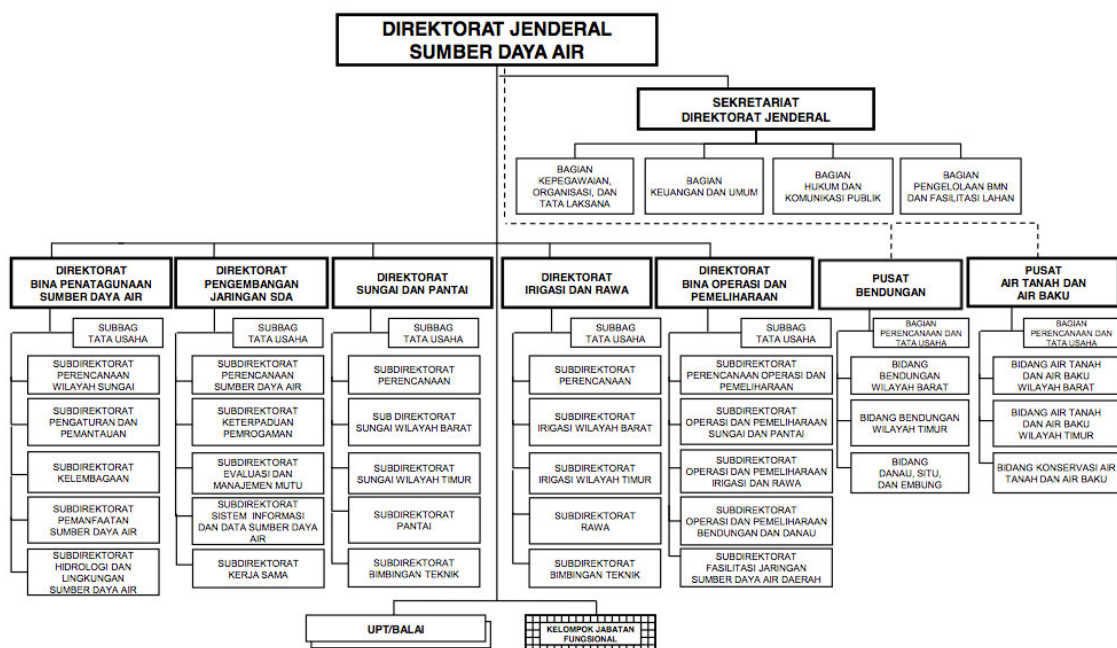
70. To monitor and accelerate land acquisition, in August 2015, the DGWR established a Task Force for Monitoring, Evaluation, and Coordination for Acceleration of Land Acquisition in Water Resources Infrastructure. This tasks force includes officials in DGWR and resource persons from other agencies such as MASP/NLA, Ministry of Environment and Forestry, Ministry of Home Affairs, Financial and Development Supervisory Agency, the Attorney General, and professional speakers.

71. In DGWR, the number of staff working at the Country Assets Management and Land Facilitation Division is 15, and the ones specifically working at the land facilitation unit is limited to 4, including the head of sub-directorate. Hence, there are plans to add sufficient staff to this DGWR's unit to enable it to properly handle its land acquisition tasks.

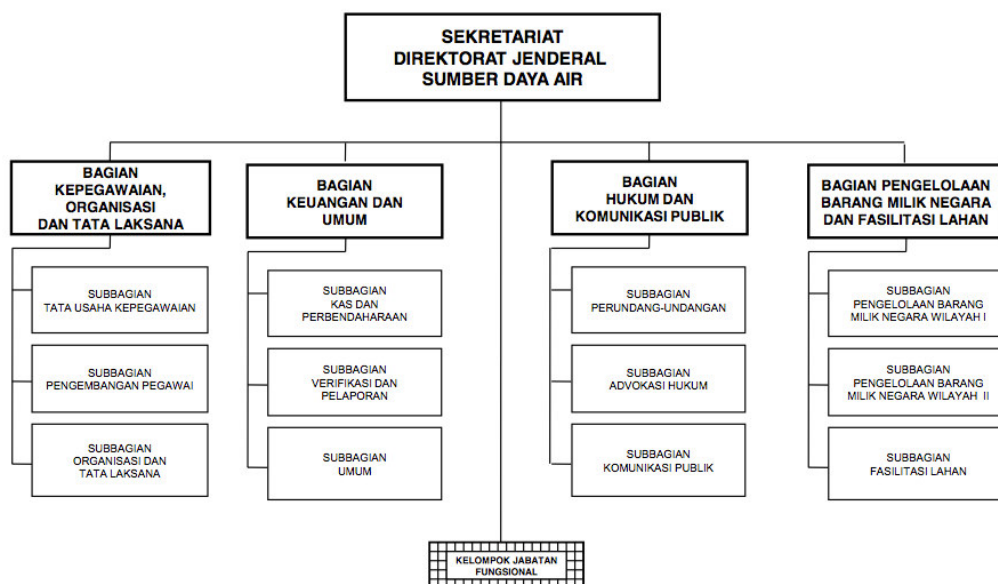
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<sup>18</sup> Ministry of Public Work Regulation, *Permen PUPR* No. 15/2015 Article 207 (3).

Picture 1. DGWR Organisational Structure



Picture 2. Secretariat of DGWR Organisational Structure



72. At local level, the *Balai Besars* of DGWR have adequate number of competent staff, who mainly focus on technical/sector aspects. The number of staff assigned specifically to social safeguards is, however, very limited. The social safeguards issues are handled by the Satker

or project manager (*PPK*), who is also responsible for overall project and may not pay detailed and dedicated attention to the substantive issues related to land acquisition/involuntary resettlement. Moreover, in some *Balai Besars* there are only 2–3 staff assigned to land acquisition despite a rather large number of projects for which land acquisition/involuntary resettlement needs to be timely and adequately developed and implemented.

73. The number of staff at Assets Management and Land Facilitation Division is still lacking with limited knowledge as well on legal framework and experiences in handling safeguards. Normally, the DGWR *Balai Besar* staff assigned for safeguards has relevant experiences. However, the knowledge on the current legal framework and the quality of the safeguards documents still needs to be improved

74. The staff's knowledge products are limited to the resettlement and environmental frameworks prepared for projects financed by development partners, such as ADB, WB, and JICA. DGWR has no specific safeguard guidance of its own. Meanwhile in practice the PPK and responsible staff in the BBWS have an informal discussion forum about land acquisition experience, and have used the forum to share their experience and best practices in handling the land acquisition – resettlement issues<sup>19</sup>.

75. Given the existence of safeguard unit, capacity of staff, and budget resources, the capacity of DGWR and *Balai Besar* is rated “moderate”. Detailed explanation on the rating of DGWR and *Balai Besar* for particular project is explained in Appendix 11.

### 3. Directorate General of Highways (DG Bina Marga)

76. There are three sub-directorates responsible for social safeguards at the DG Bina Marga:

- a. Sub-directorate of Environmental and Road Safety under the Directorate for Road Network Development (*Subdirektorat Lingkungan dan Keselamatan Jalan*). This sub-directorate covers the following: (a) preparation and development of norms, standards, guidelines, and criteria of environmental engineering, mitigation of natural disasters, sustainable construction and road safety; (b) preparation of policy and Safety Management System and Occupational Health and Environment (*SMK3L*) and environmental engineering for roads; (c) preparation of and audit program for road safety and investigation of accident prone locations; and (d) assistance and evaluation on implementation of road function feasibility.
- b. Sub-directorate of Construction Management (*Subdirektorat Manajemen Konstruksi*) covers environment management issues during construction.
- c. Sub-directorate of Land Acquisition under the Directorate for toll road, urban road, and facilitation of regional roads (*Subdirektorat Pengadaan Tanah*). This sub-directorate plans, prepares, assists, and monitors implementation of land acquisition.

77. The development of the toll road is under the DG Bina Marga at the central office in Jakarta, so the agency that needs land is Bina Marga. Land acquisition is managed by the Land Acquisition Unit of DG Bina Marga and this unit has to prepare the land acquisition plan.

78. According to the MPWH regulation *Permen PUPR 15-2015 SOTK*, the Sub Directorate of Land Acquisition is placed under the Directorate of Toll Road, Urban Road, and Regional

<sup>19</sup> Interview with Mr. Agus Safari, Head of Satker BBWS Ciliwung Cisadane, and Mr Ari, Head of Country Assets Management Sub division, 14 February 2017

Road Facilitation (*DJBHP&FJD*) of the DG Bina Marga.

79. The Sub Directorate is involved in the planning, preparation, development, and monitoring of the land acquisition. These tasks are delivered by carrying out the following:<sup>20</sup>

1. Establishment and development of the norm, standard, guidance, and criteria of land acquisitions;
2. Development of the plan, program preparation, carrying out the inventory, and monitoring of the land acquisition for freeways and toll roads;
3. Preparation of the work procedure and facilitation of the socialization of land acquisition;
4. Supervision of the implementation of land acquisition;
5. Securing assets that are the result of the land acquisition in Trans Jawa and Non Trans Jawa toll road projects; and
6. Coordination and facilitation of land acquisition in Trans Jawa and Non Trans Jawa toll roads with the center of land acquisition land facilitation.

80. DG Bina Marga's units on environment and land acquisition seem to have sufficient number of staff: sub-directorate on environment and road safety has 12 staff; and sub-directorate on land acquisition also has a significant number of staff.

81. Staff of the land acquisition division at DG Bina Marga have good knowledge and experiences in land acquisition. However, this division only covers toll road projects and does not serve land acquisition for national highways projects managed by the DG Bina Marga and *UPT/Balai Besar*. The staff of the sub – directorate of Environment and Road Safety have good knowledge of environment safeguards, yet less of land acquisition. The staff responsible for projects at DGH sector/thematic directorates has good capacity in technical matters (engineering), but its capacity in safeguards is limited. At the local government level responsible for land acquisition/involuntary resettlement of MPWH's projects, the staff handling safeguards is quite sufficient, yet the knowledge on the current legal frameworks still need to be strengthened.

82. Knowledge management of social safeguards at the DG Bina Marga is well established, however, the guidance materials published and disseminated are more for environment and safety. Currently the DGH, with the support of ADB and Australian Aid, is preparing tip sheets on land acquisition as part of the communication package and training on communication for road projects<sup>21</sup>.

83. With the above assessment on the safeguard unit, capacity of staff, and budget resources, the capacity of DG Bina Marga is rated "strong". However, since most land acquisition/involuntary resettlement for the highway projects are handled and financed by local governments using their own budget, further assessment to the capacity and commitment of local government in handling social safeguard need to be strengthened.

#### **4. Directorate General of Human Settlement (DG Cipta Karya)**

84. The capacity of the Directorate General of Human Settlement (DGHS – DG Cipta Karya) is rated "weak". There is no dedicated safeguard unit at the DGHS. The land

<sup>20</sup> Permen PUPR 15-2015, Organizational Structure and SOTK, Paragraph 468 and 469

<sup>21</sup> ADB TA 8530 – INO (Subproject 5): Sustainable Infrastructure Assistance Program: Strengthening Community Participation in Project Design, Implementation, and Monitoring in Regional Road Development Project



acquisition/resettlement is generally facilitated (or implemented, if central DGHS is the project owner) by the concerned sub-directorates responsible for project preparation and implementation in collaboration with the local governments where the projects are located. Normally, land acquisition is carried out and financed by the relevant local governments as their contribution to the water supply and sanitation projects financed by DGHS.

85. The function of the DGHS is on policy implementation and providing technical guidance and supervision in the development of residential areas, design of the building arrangements, and development of a supply system for drinking water, wastewater system management, drainage and waste. Given the said functions, projects run by the DGHS – at the implementation phase – must be handed over to the local governments and thus become an asset of the local governments. Since DGHS does not carry out land acquisition, no safeguard unit for the process has been set up within the agency. The responsibility to meet the land requirements of the project is devolved to the local government, while the DGHS focuses on physical construction.

## **5. State Electricity Company (PT PLN) Persero**

86. Since 1967, PLN has implemented many projects including hydropower, power plants, transmission lines, and distribution lines both funded by PLN itself and multilateral financing agencies. The capacity of PT PLN is deemed adequate, therefore it is considered “strong”. The land acquisition issues in the State Electricity Company (PT Perusahaan Listrik Negara or PLN) Persero are under the responsibility of the Health, Safety and Environment Division,<sup>22</sup> under the Directorate of Human Capital Management.<sup>23</sup> The division has responsibilities to review the Land Acquisition and Resettlement Plan (LARP), monitor the implementation of the LARP, and prepare the mobilization of the Independent Monitoring Agency (IMA) at the preparatory stage of project development. The organizational structure of PLN and the Directorate of Human Capital Management are shown below.

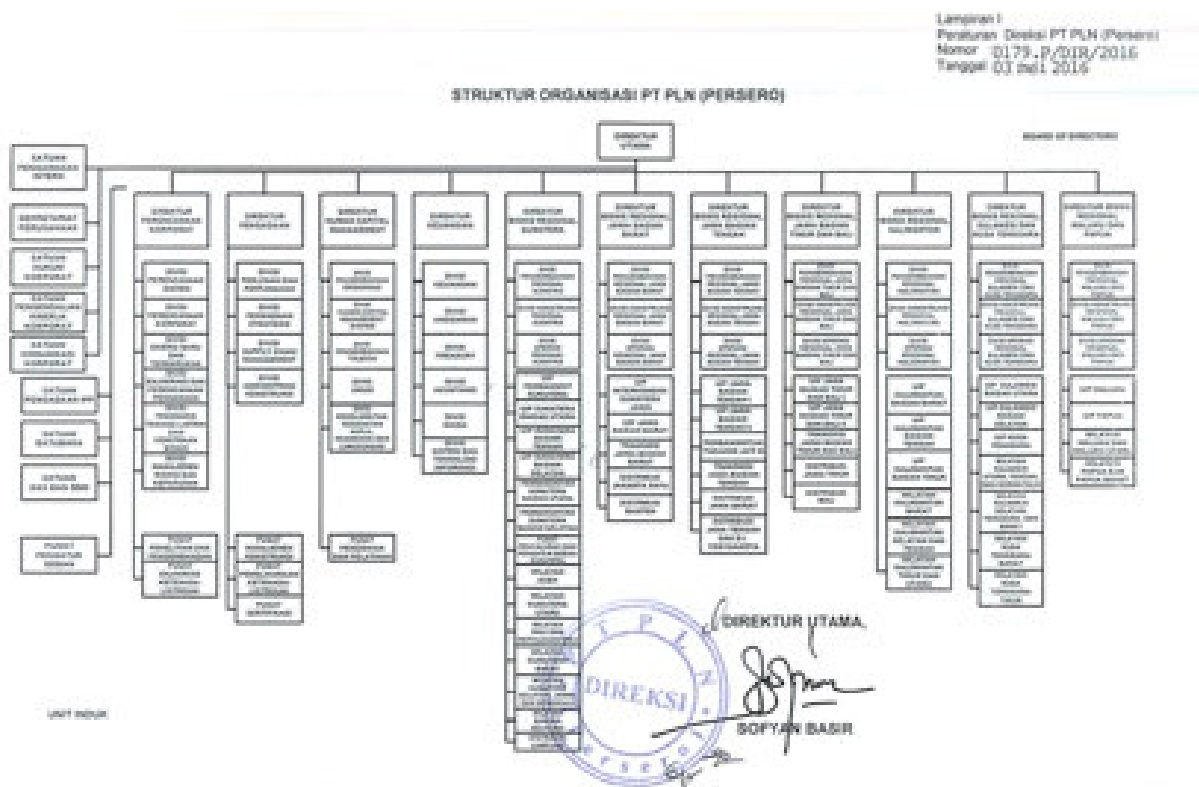
87. The government recently released the Perpres 4 of 2016 concerning the Acceleration of the Development of Electricity Infrastructure that significantly reduces the time and simplifies the land acquisition process and determination of location. Chapter VII, Article 33 to Article 37 of the regulation specifically stipulates land acquisition aspects for the development of electricity infrastructure including land acquisition procedures, location determination, land provision for the transmission line projects, and support of local government for land acquisition.

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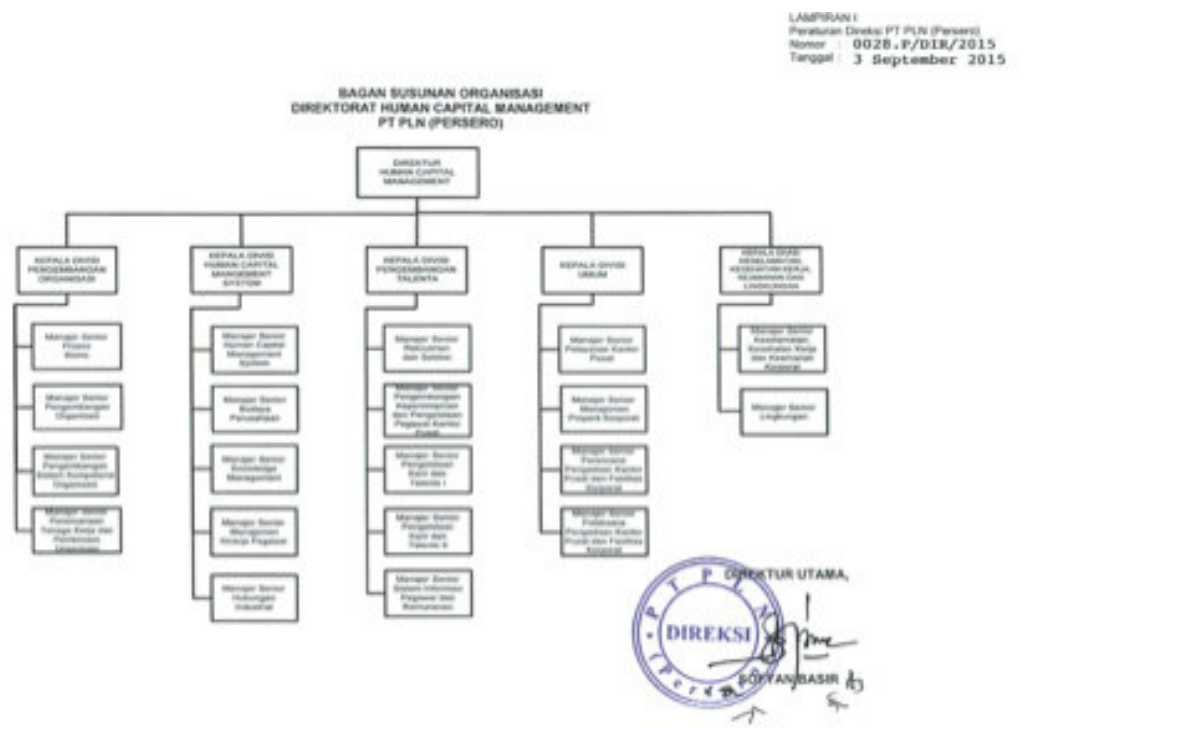
<sup>22</sup> Divisi K3L – Kesehatan Keselamatan Kerja dan Lingkungan

<sup>23</sup> Based on the PLN Regulations released in 2016 named Board Decision No. 0179.P/DIR/2016 about Organisation and PLN Working Procedure the Board Decision No. 0028 P/DIR/2015 Concerning Organisational Structure, Responsibility and Main Tasks of Directorate of Human Capital Management.

Picture 3. PLN Organisational Structure



Picture 4. Directorate of Human Capital Management – PLN Organisational Structure



88. Meanwhile, PLN has the PLN Board of Directors Decree 0289 of 2013 regarding Land Acquisition for the Purpose of Providing Electricity, Operational Costs of Land Acquisition, and Operational Cost of Compensation that was replaced by the Board of Directors Decree 0344.P/DIR/2016 issued in December 2016. The Decree covers (i) land acquisition for the development of public interest and for non-public interest including development for PLN offices, warehouse, staff housings; (ii) cost for land acquisition; (iii) compensation. It includes land acquisition objects for compensation, forms of compensation, valuation of land acquisition objects, deliberations, compensation payment, compensation for urgent situation cost and benefit analysis, grievance mechanism and deposit compensation money in the court; and (iv) registration and certification of acquired land<sup>24</sup>. The decree stipulates that land acquisition less than 5 hectares for the development of public interest shall refer to the PLN Decree without following the steps set forth in the Law 2 of 2012 on Land Acquisition for the Development of Public Interest and its implementing regulations. Land acquisition for the development of public interest more than 5 hectares will follow the steps in the land acquisition law. As for compensation to owners of land, building, trees and other objects under the transmission line of above 35 kV which will be formed as free space, the Ministry of Energy and Mineral Resources Decree 38 of 2013 regarding Compensation of Assets in the Right-of-Way (ROW) of Transmission Lines establishes procedures, mechanisms, and formulas for compensation.

89. PLN is a decentralized operation, and therefore has dedicated safeguard staff at headquarters and in regional offices and units. Headquarters staff is responsible for policy matters while regional staff is responsible for implementation and delivery. At PLN headquarters, the Health, Safety and Environment Division under the Director of Human Capital Management comprises nine full-time staff who handle environmental and social safeguards issues all over the country. In addition, under the Directorate of Procurement, PLN has a division of Permit and Land Acquisition (*Perijinan dan Pengadaan Tanah*) with 6 staff responsible for permits and land acquisition.

90. At regional level, there are three offices responsible in implementing the projects, namely; i) PLN Development Unit (PLN *UIP*); ii) PLN Regional (PLN *Wilayah*); iii) PLN Load Dispatch Center (PLN *P3B*), which is responsible for the operation and maintenance of substations and transmission lines. PLN UIP has a safeguard unit with two or four staff depending on the number and scale of projects allocated. It oversees the compliance of safeguard-related laws and regulations and PLN guidance. Each PLN development unit also has a safeguard team comprising about 10 staff members. It handles environment and land acquisition issues. In some cases, to accelerate the implementation of safeguard measures, PLN establishes a project implementation unit for specific projects<sup>25</sup>.

91. PLN *Wilayah* responsible for the construction, operation of power plants, substations, transmission lines and distribution lines. Each *Wilayah* has some units called *Area*, which is in charge of construction of distribution lines and operation of substations, transmission lines and distribution lines. Each *Area* has some units called *Rayon* which is in charge of customer services including maintenance of distribution lines within sub districts. Each *Wilayah* has one to two staff assigned to oversee implementation of social issue<sup>26</sup>.

<sup>24</sup> PT PLN, Board of Directors Decree 0344.O/DIR/2016 Concerning Land Acquisition in PT PLN (Persero). December 2016.

<sup>25</sup> Asian Development Bank, Program Safeguard System Assessment; PT Perusahaan Listrik Negara, Electricity Grid strengthening – Sumatera RBL Program. November 2015.

<sup>26</sup> Asian Development Bank, Program Safeguard System Assessment: INO- Sustainable Energy Access in Eastern Indonesia- Electricity Grid Development Program, August 2016.

92. PLN has accumulated adequate knowledge and experience in handling environmental and social safeguard issues. To enhance their capacity, PLN staff attend trainings (including training on safeguards) provided by the Education and Training Unit of PLN Corporate University. All staff are entitled to select and attend trainings twice a year. In addition, several PLN staff have been enhancing their understanding of social and environmental safeguards by participating in external training conducted by ADB<sup>27</sup>.

93. PLN has an in-house human resource development unit called Education and Training Center and since the last few years is called “PLN Corporate University”. This university has training facilities down to the regional levels. However, the University rarely trains staff on land acquisition/involuntary resettlement safeguards. Intensive capacity building trainings on social safeguards for staff are mostly conducted at the project level. In addition, PLN provide financial support for the staff to participate in the external learning for social safeguard. However, the assessment identified that the capacity of safeguard staff still need to be strengthened in understanding the legal framework on land acquisition/involuntary resettlement and the applications of legal frameworks and guidelines. Therefore, robust in-house trainings need to be conducted regularly for PLN staff to increase the awareness of safeguard requirements and ensure their proper implementation.

94. PLN has a very effective complaints-management system through (i) call center 123, which can be accessed by anyone anywhere in Indonesia through the website, email, telephone, and social media; (ii) online by using integrated complaint solving application (APKT); and (iii) frontline, i.e., customer services. PLN regional offices and units immediately act on community complaints including those related to construction impacts, environment, community health and safety, and resettlement issues, by deploying PLN technical service responders<sup>28</sup>.

95. The detailed assessment of the capacity of sector agencies is described in Appendix 11.

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<sup>27</sup> Asian Development Bank, Program Safeguard System Assessment; PT Perusahaan Listrik Negara, Electricity Grid strengthening – Sumatera Program. November 2015. Para 45.

<sup>28</sup> Footnote 19, pp. 6.