

August 2016

Ministry of Public Work and Housing:
Needs Assessment of Capacity Strengthening in
Environment and Social Safeguards

CURRENCY EQUIVALENTS

(as of 1 August 2016)

Currency Unit	–	rupiah (Rp)
Rp1.00	=	\$0.0000764643
\$1.00	=	Rp13,078

NOTE

- (i) In this report, "\$" refers to US dollars unless otherwise stated.

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I. Introduction

1. The proposed Accelerating Infrastructure Delivery through Better Engineering Services Project (the ESP) will help meet the infrastructure development objectives of the Ministry of Public Works and Housing's (MPWH) Sector Development Plan (SDP), 2015–2019 by improving the quality and timeliness of the delivery of the SDP's public investment program. The ESP will support the preparation of some 40 infrastructure projects in the national road, water resources, irrigation, flood control, dams, urban water supply and sanitation sectors. Specifically, the ESP will support the preparation of environmental impact assessments and land acquisition documents as per government requirements, and facilitate the obtaining of relevant permits to ensure that the projects are ready for civil works.

2. Effective planning and implementation of environmental and social safeguards (land acquisition and involuntary resettlement) depend on the capacity and commitment of the central or local offices of the MPWH in charge of project preparation and implementation. The Government has increasingly improved the policy and legal framework for environmental impact and land acquisition and resettlement.¹ To implement the legal framework within its systems and processes, at the end of 2014 the MPWH released technical guidelines on environmental management, land acquisition and resettlement, and the handling of indigenous people.²

3. Therefore, assessment of the MPWH capacity to implement the national- and ministry-level frameworks on land acquisition and resettlement, as well as environmental safeguards, is important for the timely and proper implementation of the ESP. The capacity assessment includes assessment of the MPWH structures responsible for safeguards, capacity of staff to carry out designated responsibilities, financial resources for implementation of safeguards, and recommendations to strengthen the safeguards management systems at the MPWH.

II. MPWH structures on safeguards management

4. The MPWH has dedicated sub-directorates handling environmental and social safeguards. Currently, there are two directorates general of MPWH which have a specific unit for safeguards, namely the Directorate General of Water Resources (DGWR) and the Directorate General of Highways (DGH). There is no dedicated sub-directorate for safeguards at the Directorate General of Human Settlement (DGHS).

a. DGWR

5. A land facilitation sub-division has been set up as part of the Division on government assets management and land facilitation under the DGWR's Secretariat. The land facilitation unit is responsible for *facilitating* land acquisition for water resources development. The tasks handled by this sub-division include: (i) preparation of required materials for coordination of land acquisition with other related agencies; (ii) provision of technical guidance and assistances on land acquisition; (iii) addressing problems on land acquisition for the implementation of water resources development, including required permits at the national level; and (iv) facilitation of protection and certification of the acquired land assets. Currently, the unit is identifying all lands to be acquired for strategic and national projects and ensuring that the projects have been included in the regional spatial planning.

¹ Law No. 2/2012 and its implementing regulations, such as: (i) President of the Republic of Indonesia Regulation No. 71/2012 (with several amendments); (ii) Head of National Land Agency No. 5/2012;14; (iii) Ministry of Finance Regulation No. 13/PKM.02/2013;15; and (iv) Ministry of Home Affairs Regulation No.72/2012).

² Circular letter No. 12 /SE/M/2014 dated 23 December 2014.

6. To monitor and accelerate land acquisition, in August 2015 the DGWR established a task force for monitoring, evaluation, and coordination for the acceleration of land acquisition in water resources infrastructure. This task force includes officials from the DGWR and other agencies such as the Ministry of Agrarian and Spatial Planning/National Land Agency (BPN), the Ministry of Environment and Forestry, the Ministry of Home Affairs, the Financial and Development Supervisory Agency, the Attorney General, and other professionals.

7. There is no specific unit at the central office of the DGWR responsible for overseeing environmental safeguards issues during project preparation.³ Preparation of the environmental documents is normally done by the regional and local offices of the DGWR (Balai Besar Wilayah Sungai) that are responsible for the project implementation.⁴

b. DGH

8. At the DGH, there are three sub-directorates responsible for safeguards:

- 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: (i) preparation and development of norms, standards, guidelines, and criteria of environmental engineering, mitigation of natural disasters, sustainable construction, and road safety; (ii) preparation of policy and the Safety Management System and Occupational Health and Environment (SMK3L) and environmental engineering for roads; (iii) preparation of an audit program for road safety and the investigation of accident-prone locations; and (iv) assistance and evaluation of the implementation of road function feasibility.
- b. *Sub-directorate of construction management* which covers environmental management issues during construction (Subdirektorat Manajemen Konstruksi).
- c. *Sub-directorate of land acquisition* under the Directorate for Toll Roads, Urban Roads, and the Facilitation of Regional Roads (Subdirektorat Pengadaan Tanah). This sub-directorate plans, prepares, assists, and monitors the implementation of land acquisition. Its functions are: (i) development of norms, standards, guidelines, and criteria of land acquisition; (ii) preparation of plans, programs, implementation of inventory and monitoring for implementation of land acquisition for non-barrier road and toll-roads; (iii) preparation of working procedures and facilitation for socialization of land acquisition; (iv) assistance in the implementation of land acquisition study; and (v) other coordination and facilitation in land acquisition issues.

9. To implement the safeguards requirements, the safeguard units of the DGWR and DGH collaborate with relevant implementing agencies (*Unit Pelakdasana Teknis-UPT*) or Balai Besar (DGWR regional offices responsible for project implementation). At Balai Besars of the DGWR, land acquisition is the responsibility of the project manager (PPK) with the support of some staff. The Balai PPK collaborates with the local government (Governor/Bupati Office), local planning

³ There is a sub-directorate of hydrology and water resource environment. It does not, however, facilitate environmental assessments (AMDAL or UKL/UPL) required for water resources projects. This sub-directorate assists in hydrological management of river basins, ensuring water sources quality, preparation of strategic environmental assessments of water resources, and coordination of issues related to climate change mitigation and adaptation.

⁴ The sub-directorate for external cooperation (Sub-Dit Kerjasama Luar Negeri) of the Directorate on Budget and Planning is responsible for review and implementation of standards and procedures for external cooperation, including safeguards. Safeguards principles and requirements set in the projects financed by multilateral agencies are reviewed by this sub-directorate prior to endorsement by the DGWR and implementation by the DGWR regional offices.

office (BAPPEDA), and local office of the National Land Agency (BPN) to prepare and implement land acquisition for the infrastructure project.

10. The preparation and implementation of environmental impact assessments (AMDAL/UKL/UPL) are done by the planning division of Balai, which will collaborate with the regional environmental management offices (BLHD or BPLHD). The safeguard units at national offices (DGWR and DGH) provide UPT/PPK with policy guidance and monitoring and facilitate the required permits at national level.

c. DGHS

11. There is no dedicated safeguard unit at the Directorate General of Human Settlement (DGHS). The land acquisition/resettlement and environmental safeguards are 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 and AMDAL/UKL-UPL are carried out and financed by the relevant local governments as their contribution to the water supply and sanitation projects financed by DGHS.

12. The function of the DGHS is more the implementation of policy and providing technical guidance and supervision in the development of residential areas, coaching the building arrangement, development of the supply system for drinking water, waste water system management, and drainage and waste. Given these functions, the projects run by the DGHS— at the implementation phase—must be handed over to the local governments and become an asset of the local government. As the eventual ownership over the project assets will be with the local government, they are responsible to meet the land needs for the project, while the DGHS is more focused on the physical construction.

III. Preparation of Land Acquisition Plan and AMDAL/UKL-UPL

13. The MPWH (both at central- and Balai Besar/UPT-levels) has much experience in handling environmental and social safeguards, including under projects financed by the WB, ADB, JICA, etc. The MPWH normally mobilizes external consultants for preparing AMDAL/UKL-UPL and Land Acquisition Planning Document (LAP) to comply with the government requirements on environmental and social safeguards. Once the LAP is complete, the Balai then collaborates with the Governor/Bupati/Bappeda offices for the preparation of land acquisition (to obtain project location determination) and the BPN/land Office for land acquisition implementation.⁵

14. For projects financed by development partners, the LAP document to meet the government procedure for land acquisition is prepared in parallel with the Land Acquisition and Resettlement Plan (LARP) required by the development partner. Therefore, the consultations are more intensive and the data on the inventory of affected assets/losses is more detailed and comprehensive. In general, the quality of the LAP document for projects financed by development partners is reported to be better compared to the LAP document of projects financed by the national/regional budget.

⁵ Lack of coordination between the central MPWH office, Balai Besar, and the concerned government agencies at provincial and district level contributes to the delays in development and implementation of AMDAL/UKL-UPL and LAP.

15. Local governments and local land offices indicate that the quality of the LAP document does affect the process of land acquisition. The better the preparation of the LAP document, the faster the land acquisition process.

IV. Human Resources and Safeguards Management Capacity

16. **Staffing.** The DGH's units on environment and land acquisition seem to have sufficient number of staff: the sub-directorate on environment⁶ and road safety has 12 staff; and the sub-directorate on land acquisition also has a significant number of staff. In the DGWR, the number of staff working at the land facilitation unit is limited at four, including the head of the sub-directorate on asset management and land facilitation. Hence, there are plans to add sufficient staff to this unit of the DGWR to enable it to properly handle its land acquisition tasks.

17. At the local level, the Balai Besars of the DGWR and DGH have an adequate number of competent staff, who mainly focus on technical/sector aspects. The number of staff assigned specifically for safeguards is, however, very limited. The safeguards issues are handled by the Satker or project manager (*PPK*), who is also responsible for the overall project and may not pay detailed and dedicated attention to substantive issues related to AMDAL and LAP. Moreover, in some Balai Besars there are only two or three staff assigned for land acquisition, despite the rather large number of projects for which LAP and AMDAL need to be adequately developed and implemented in a timely manner.

18. As the DGHS has no responsibility for land acquisition and environmental assessment, there is no staff assigned specifically to deal with environmental and social safeguards. Safeguards are handled by the project team in the respective directorate responsible for the entire project. The function of the project team is more to monitor and coordinate with the relevant local government (Bappeda and relevant Dinas) to ensure that the land and environmental permits are available for the project on time.

19. **Knowledge management.** The safeguards unit at the DGWR was established in 2015, and the number of staff at this unit is still limited, with limited knowledge as well of the legal framework, and limited experience in handling safeguards. Normally, the DGWR Balai Besar staff who are assigned with safeguards have relevant experience. However, knowledge of the current legal framework and the quality of the safeguards documents still need to be improved. Staff responsible for projects at DWWR sector directorates have good capacity in technical matters related to their sectors, but capacity in safeguards is still limited.

20. Staff at the land acquisition division at the DGH have good knowledge and experience in land acquisition.⁷ However, this division only covers toll road projects and does not carry out land acquisition for national highways projects managed by the DGH and UPT/Balai Besar. Staff at the sub-directorate on environment and road safety have good knowledge of environmental safeguards, but less of land acquisition. Staff responsible for projects at DGH sector/thematic

⁶ MPWH capacity in AMDAL goes back to the previously existing AMDAL review commission, which had competent staff in environmental assessment and management. This commission ceased to exist with the MPWH's decentralization of AMDAL process to the local level. At the national level, only the Ministry of Environment and Forestry has an AMDAL review commission. Line ministries such as MPWH are represented in Technical Teams established under MOEF's AMDAL review commission.

⁷ These staff members are responsible for the preparation and implementation of land acquisition for DGH toll road projects (in collaboration with land acquisition committees). They share knowledge of land acquisition based on experience gained in various projects.

directorates have good capacity in technical matters (engineering), but their capacity in regard to safeguards is limited.⁸ At the local government level responsible for environmental and social safeguards of MPWH projects, the staff handling safeguards are quite sufficient, but knowledge of the current legal frameworks still needs to be strengthened.

21. To the extent possible, the DGWR, DGH, and DGHS have supported capacity building of their staff in environmental and social safeguards. This normally occurs at project level and through trainings provided by development partners. For example, MPWH staff working on projects and safeguards participated in trainings on resettlement safeguards organized by the ADB, in collaboration with BAPPENAS, under ADB TA 6425 and TA 7566.⁹ However, the number of staff participating at such trainings is limited. Staff rotation also contributes to the need for continuous capacity building in safeguards.

22. Knowledge management at the safeguard unit in the DGH is well established: several environmental guidance materials for road development have been published and disseminated to the regional offices. At the DGWR, knowledge products are limited to the resettlement and environmental frameworks prepared for projects financed by development partners, such as the ADB, WB, and JICA. The DGWR, however, still does not have its own specific safeguard guidelines.

23. **Budget.** The land acquisition and AMDAL/environmental budgets are linked and included in the respective activities/project/program of directorate/unit/division as project owners. All Directorates General of MPWH allocate an annual budget for land acquisition, especially for national and strategic projects. In 2015, the MPWH allocated 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 also have annual budgets for land acquisition and environmental safeguards, but budget adequacy varies.

24. Based on the targets of MPWH Strategic Plan, 2015–2019, the need for land acquisition in the MPWH is estimated at 133,657 hectares (ha). This consists of 21,172 ha for the road sector, 111,437 ha for water resources, 592 ha for human settlement, and 456 ha for public housing. The budget for land acquisition is estimated to reach IDR 82.8 trillion. This amount consists of IDR 33.76 trillion for the DG of Highways, IDR 46.67 trillion for the DG of Water Resources, IDR 1.5 trillion for the DG of Human Settlements (SPAM Regional, garbage and waste); and IDR 931 billion for others. The magnitude of these costs increases significantly compared to the expected funding allocations.

25. Every year, each Balai proposes a budget to the relevant DG of the MPWH. However, due to limits set for the overall MPWH budget, the budget amount received by Balai is often lower than the proposed amount. This, in turn, affects the timeliness and quality of land acquisition. For the DGHS, the budget for land acquisition is borne by the local governments either at provincial or district levels as their contribution to projects. However, using this mechanism, the DGHS indicates that many projects experience delays due to issues in land acquisition (80%). Limited budget for land acquisition in the local government as well as land disputes contribute to delays. To address land acquisition and budget issues, in 2015 the DGHS

⁸ The new principles and procedures of land acquisition do not seem to be well understood by the project managers and staff. International principles of social safeguards are sometimes thought of as a technical prerequisite for getting development partner financing for infrastructure projects, rather than a conceptual conviction of the need to protect the affected persons or entitled parties.

⁹ TA 6425-REG: Capacity Development on Involuntary Resettlement; and TA 7566: Strengthening and Use of Country Safeguard Systems.

allocated a budget for land acquisition. At DGH, the budget for national road projects is mostly borne by local governments, while that for toll roads is borne by the DGH. However, considering that land is the critical component for infrastructure development, in the past few years, the DGH has allocated more budget for land acquisition for national road projects.

26. **Gender Mainstreaming in MPWH.** Gender has been mainstreamed in the MPWH. The purpose of gender mainstreaming (*Pengarusutamaan gender*) is to ensure gender responsiveness in the implementation of infrastructure development of public works. This means that there is no gap between men and women in accessing and benefitting from the results of infrastructure development, as well as enhancing the participation and control of infrastructure development. To improve gender mainstreaming, some gender policies have been issued by the MPWH, including policy on gender-responsive planning and budgeting and the establishment of a gender mainstreaming team (GMT) in the MPWR. Currently, the GMT is chaired by the Head of Research and Development Division of the MPWH and is supported by a gender working group in each DG. On the program side, gender impact assessment in infrastructure development has been carried out, and gender-responsive indicators have been set forth. In 2015, the MPWH has been in the top 99 (of 1186 agencies) for public service innovation.

V. Recommendations

27. **Further strengthening of safeguards capacity.** The MPWH has strengthened its institutional capacity and human resources to improve its performance. However, the substantial increase of the MPWH's infrastructure program under the RPJMN, 2015–2019 will require a much stronger capacity in adequate management of environmental and social safeguards. As the handling of safeguards involves other concerned parties at the regional level, capacity building needs also include those agencies at the local level.

28. In regard to the ESP, delivery of capacity building should be prioritized as follows:

- a. staff handling project preparation at the DGWR's, DGH's, and DGHS's sector directorates, whose projects are supported under the ESP;
- b. staff handling safeguards (AMDAL/UKL-UPL and land acquisition) in safeguard units in both the DGWR and DGH;
- c. staff in Balai Besar (for highways, water resources, and human settlement) handling projects and safeguards;
- d. selected relevant provincial and district governments that will be implementing projects supported under the ESP.

29. Capacity building in land acquisition may focus on:

- a. explaining the prevailing legal framework (applicable laws and regulations, technical guidance, etc.);
- b. LAP scope and requirements (including compliance with spatial planning);
- c. land/assets valuation, and transfer of assets.
- d. Note: The training manual on social safeguards in land acquisition developed under TA 7566 can be used as a reference for the land acquisition capacity building under the ESP.

30. Capacity building in environmental safeguards may focus on:

- a. explaining the details of the existing environmental legal and institutional framework;

- b. training in environmental safeguards during project preparation and implementation, including environmental monitoring.
- 31. Strengthening safeguard units and task force.** Assistance to strengthen the safeguard units will be provided in the form of:
- a. capacity-building training to the staff of the units and task force at DGWR;
 - b. assistance in preparation or updating of technical guidance for environmental issues and land acquisition, and dissemination to the regional offices and stakeholders;
 - c. strengthening of capacity and explanation of the processes and procedures for obtaining required permits (project location determination, forestry permits, etc.);
 - d. assistance in the establishment of safeguard units at Balai level.
- 32. Appointing Focal Persons for Safeguards at DGHS.** Given the critical issues related to land acquisition in the projects faced by the DGHS, appointment of some staff handling safeguards (safeguard focal points) is strongly recommended. The safeguard focal point could be under the Secretariat of Directorate General and responsible for monitoring land acquisition and environmental issues and to facilitate coordination among the directorates in the DGHS for safeguards implementation progress. The detailed scope of the work and reporting for assigned staff needs to be prepared.
