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# LAND ACQUISITION IN INDONESIA AND LAW NO. 2 OF 2012

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**Abstract**

This paper is a qualitative case study of two land acquisition cases highlighting the empirical effect of legal reforms on land use policy over time in Indonesia. Under the Suharto regime, land acquisition in the public interest was often coercive, with the government determining one-sided compensation and no recourse for appeal. The legal basis for this process was Presidential Decree 55/1993, which gave the provincial governor the ultimate authority to rule on the matter. A new legal framework for land acquisition, which the government enacted in 2012, redefined the basis on which the state could acquire land in the national interest. It imposed clear administrative procedures and deadlines on dispute resolution and land procurement, including a legal appeal process. Outcomes can still vary widely according to many variables, particularly the capacity of district court judges, but comparative analysis suggests that the law is moving Indonesia toward a more equitable policy framework.

**Keywords**: Indonesia, land use policy, land acquisition, infrastructure, legal reforms

**JEL Classification:** H13, K11, K40

# Contents

# 1. INTRODUCTION

Compulsory land acquisition has been a major impediment to economic development in Indonesia, often delaying major infrastructure projects for years. Prior to 2012, the legal authority and procedure through which the state could acquire land were both unclear and contradictory. Lacking a legal framework that provided the process with certainty and legitimacy, land acquisition has often triggered accusations of state coercion, intimidation, and human rights violations. In 2012, the Indonesian legislature passed a landmark bill called Law No. 2 of 2012 on Land Acquisition in the Public Interest. It conferred upon the state the legal authority to acquire privately held land for the purpose of economic development, and it established a statutory process for the determination of compensation as well as clearly defined procedural requirements and deadlines for all parties involved. This has resulted in the acceleration of many long-stalled infrastructure projects and has ensured that the outcome of compulsory land acquisition is generally more equitable, though there are some deficiencies in the legislation that are likely to require further reform.

This paper will begin with a discussion of land use law in Indonesia, focusing on the historical reasons for land acquisition constraining development efforts. It will then move to a comparative analysis of two case studies, the Lombok International Airport and the New Yogyakarta International Airport (NYIA). The Lombok Airport project began in the 1990s and therefore did not use Law No. 2 of 2012, while the NYIA project began in 2014 under the authority of the new law. A qualitative analysis of both projects reveals important ways in which the law has changed the process of compulsory land acquisition in Indonesia. As the analysis shows, the law ensures that compensation for registered titleholders is fairer now than it was previously. The procedural requirements that the law mandates have also accelerated the process while creating mechanisms through which titleholders can contest the will of the state. The paper concludes by discussing the policy implications of these findings and highlighting some areas of potential reform, such as compensation for non-registered titleholders and intangible losses.

# 2. LAND USE IN INDONESIA

A broad range of legal traditions have evolved over time throughout the Indonesian archipelago, including both customary legal traditions and a civil law system inherited from the Dutch (Lindsey and Santosa 2008, p. 5). Efforts to reform this system of overlapping customary and civil laws and eliminate redundancies have only seriously been underway since the fall of the authoritarian New Order (the Suharto years (1966–1998) in 1998. The capacity of local courts in Indonesia still varies widely, and rulings are often vulnerable to political pressure or corruption rather than sound legal reasoning. However, with the judiciary now being somewhat autonomous, recent scholarship has found that the institutional capacity of the courts is slowly improving and that they are making some legal decisions according to the letter of the law rather than political expediency (Butt 2014). This is the context in which land use law has developed in Indonesia, and it highlights the importance of Law No. 2 of 2012 in bringing clarity to a legal landscape that has long been confusing and contradictory.

Basic Agrarian Law No. 5 of 1960 governs the use of land in Indonesia. It established that land is a gift from God for the benefit of the Indonesian people and that society empowers the state to serve as the custodian of that land and regulate its use in the public interest (Hutagalung 2015). The law created a class of freehold title known as *Hak Milik*, but in practice this official title continued to overlap with customary land claims.

Prior to the post-1998 reform era, when the state wished to expropriate land for development, the executive branch would selectively invoke its legal authority stemming from the Basic Agrarian Law to acquire the land that it desired. The procedure through which the state could acquire land was vague, referencing the need for consensus without specifying how to achieve it. The state was otherwise content to let customary law govern land use at the local level, and little effort was made to clarify or improve the titling records (Lindsey and Santosa 2018, p 10).

The Basic Agrarian Law thus proved to be inadequate, with the state employing and enforcing it selectively throughout the country and often overwriting it with sectoral laws and ministerial decrees that eroded its legitimacy and did little to clarify issues of legal hierarchy or overlapping land titles. To complicate the statutory landscape further, President Suharto issued Presidential Decree 55 of 1993, which established a procedure via executive fiat for determining and paying compensation to landowners when the state deemed the use of the land to be in the public interest. The government never codified this into law or ratified it in the legislature; it merely emanated from the president, who in practice was the final authority on judicial matters.

The precise definition of public interest, as well as what constituted fair compensation, was left open to interpretation, and government officials alone determined compensation, minimizing the participation of local landowners in the process. There was no legal recourse for landowners to appeal the state's decision, and, as titling records were often incomplete and poorly kept, it could be difficult to establish proof of legal ownership in any case. In practice, landowners often felt compelled to accept whatever compensation the government offered under fear of coercion from the police or military. Decentralization in the post-1998 period further fractured this system of land governance. The authority for land governance devolved to local officials, but questions remained about how exactly this division of authority would work in practice (Hutagalung 2015).

One major obstacle was that the central government needed to develop and implement a national economic agenda but had to rely on local officials to execute the details, such as approving land deals. This created opportunities for rent seeking at the local level and generally mismatched incentives (Nasution 2016). It resulted in a serious log jam during the presidency of Susilo Bambang Yudhoyono (2004–14), as the process of land acquisition became so complex and cumbersome that it caused major infrastructure projects like toll roads to stall (Davidson 2015).

Faced with these obstacles, and equipped with inadequate legal tools to overcome them, President Yudhoyono began recentralizing the legal authority over land governance at the national level. These efforts ultimately produced Law No. 2 of 2012 on Land Acquisition in the Public Interest. This law, which supersedes previous executive and ministerial decrees in terms of legal hierarchy, was the first statutory revision to the land acquisition law since the Basic Agrarian Law of 1960. While it significantly enhances the state's power to acquire land in the interest of national development, it contains several procedural safeguards designed to protect landowners and ensure a more equitable outcome than previously existed.

Law No. 2 of 2012 mandates several clearly defined procedural stages, including a public outreach and discussion period prior to the issuance of the Location Permit.[1] During this phase, a team, which includes the head of the local branch of the Ministry of Law and Human Rights as well as academics, must mediate disputes. The intention is to give civil

[1] An English language translation of the law can be found at http://www.flevin.com/id/lgso/translations/Laws/Law%20No.%202%20of%202012%20on%20Land%20Acquisition%20for%20Public%20Interest%20Development.pdf.

society a greater voice in opposing the unilateral interests of the state or developers regarding project development.

It also establishes a legal mechanism for resolving disputes related to the legitimacy of the state's right to expropriate the land, first passing through the State Administrative Court before receiving a final appeal at the Supreme Court. It is also possible to challenge the amount of compensation at the district court level, with the option of appealing to the Supreme Court. Each leg of the legal process has clearly defined deadlines for rendering decisions, although, given that the capabilities of courts in different parts of the country can vary widely, this does not ensure that they will return a decision on time, and previous research has described the process as a "leap of faith" (Davidson 2015, p. 152).

Article 1.10 of the law states that the appraised value of the land must reflect "adequate and fair compensation to the entitled party." An independent third party is responsible for appraising the land at the time of issuance of the Location Permit, and the appraisal must include valuations for the land, space above and below ground, structures, plants, and objects as well as other intangible losses, such as loss of income. The law states that compensation may take the form of cash payment, replacement land, resettlement, or share ownership in the development project. However, the law explicitly states that cash payments will be privileged, and officials at the National Land Agency (Badan Pertanahan Nasional, or BPN) stated to me that almost all claims have been settled on a cash basis, as there is a perception that land banking arrangements are too complex and difficult to implement in practice.[2]

Licensed appraisers must carry out the appraisals, according to the standards that the Indonesian Society of Appraisers (MAPPI) have established, specifically SPI 306, which mandates the appraisal of the land at its "fair replacement value."[3] The ADB conducted a gap analysis of this standard, comparing it with the bank's own appraisal standards to gauge whether it conformed to best practices, and found SPI 306 to be "in line with the replacement cost principle set forth in ADB's SPS" (ADB 2017). SPI 306 allows appraisers to employ a combination of cost, income, and market valuation methods in determining the fair replacement value. As the case study below indicates, in practice, appraisers have relied mainly on the market value of comparable land in determining compensation and have struggled to reach valuations in the more complex appraisal of intangible losses.

The new law also guarantees that landowners retain title to their land until they receive compensation (or until the government deposits the compensation with the court in the case of consignment). The law is a compromise that seeks to make outcomes more equitable for landowners while imposing a maximum 3-year deadline on the process to speed up projects, clarify procedural requirements, and improve the regulatory and investment climate. Shortly after it was passed, the law received a challenge in the Constitutional Court, and the Court ruled against the complainant, adding another layer of legitimacy. In tandem with the law, President Yudhoyono also implemented reforms at the National Land Agency, pushing it to update, digitize, and record land titles more accurately (Schreiber and Schneider 2017). The following case studies will analyze the impact of these legal and bureaucratic reforms on the process of compulsory land acquisition in Indonesia.

[2] Author interview with BPN officials in Jakarta, 22 January 2019.

[3] The technical specifications of this standard can be accessed here: https://www.mappi.or.id/files/1405998014-ED_Juknis_SPI-306_200714.pdf.

# 3. LOMBOK INTERNATIONAL AIRPORT

The Lombok International Airport in Nusa Tenggara Barat (West Nusa Tenggara or NTB) offers an incisive look into the process of land acquisition during the late New Order, prior to the existence of Law No. 2 of 2012. Beginning in 1995, the Suharto Government began developing a new international airport in Lombok. Bali was already a popular destination for tourists and foreign investment, and the expectation was that the trend would spill over to the neighboring island of Lombok.

The project commenced as a wave of investment hit the region, so the 800 hectares targeted by the state-owned airport operator Angkasa Pura I for the airport was a small portion of the thousands of hectares that big developers were acquiring at the time. These developers, including Lombok Tourism Development Corporation, which President Suharto's son Bambang partially owned, were able to acquire land from locals at far below the market price, often using state security forces to coerce landowners into accepting unfavorable terms (Dibley 1996).

Amidst this general investment frenzy, Angkasa Pura I invoked the authority of Presidential Decree No. 55 of 1993 to begin acquiring 800 hectares in Central Lombok Regency. As a Presidential Decree, in theory it had less legal authority than a law that the legislature had passed, such as the Basic Agrarian Law of 1960. In practice, during the New Order, such decrees had the force of laws and the government often enforced them using the coercive power of the state's security apparatus. The decree established a one-sided and unilateral process for acquiring land, mandating the creation of a compensation team that consisted entirely of government officials and allowed the provincial governor to be the final arbiter of disputes. There was no recourse for legal appeals, and in any event the judiciary during the New Order was a highly co-opted branch of government that tended to serve the interests of the president.

In 1995, government officials began carrying out land acquisition for the airport. Team 9, which was responsible for determining compensation, did not include any local community members or civil society organizations. In a series of three public meetings held between June and July 1995, they first offered local landowners IDR1,500 per square meter for their land. Villagers reported later, in interviews about the experience, that in the third and final meeting in July, they received a take-it-or-leave-it offer of IDR2,000 per square meter and felt coerced into accepting these terms as state security personnel accompanied Team 9. The local regent, sub-district, and village heads also pressured landowners to accept the deal (Zaenudin 2013).

An investigation that the Ministry of Law and Human Rights conducted later concluded that the state had coerced landowners into accepting inadequate compensation ranging between IDR2,000 and IDR2,200 per square meter and that it subjected those who refused to jailing and violence (Lombok Post 2016). This inequity was compounded as ex-landowners watched real estate values subsequently rise, driven by rampant speculation and development. In 2001, the land prices in East Lombok had reached IDR120,000–160,000 per square meter (Fallon 2001). By 2010, the prices had reached USD$20 per square meter (Cassrels 2010). As a point of comparison, IDR2,000 in 1995 is equivalent in value to IDR15,700 in 2018, or a little over US$1.[4]

The issues related to the acquisition of land from the mainly Sasak ethnic community at below market value and the use of intimidation and violence soon became even more complicated when the Asian financial crisis forced the government to suspend the project indefinitely. The affected community, some 7,000 people, continued to occupy and live

[4] Calculated using historical exchange rates and assuming a rate of IDR14,500 to USD1 in 2018.

on the land during the intervening years as the future of the project remained uncertain. With the revival of the project in 2005, these issues resurfaced and the legacy of intimidation and unfair compensation came back into focus. The government was intent on continuing with the airport project and sought to clear the landowners from the area once again. However, as the ex-landowners felt that the initial process of land acquisition had been neither fair nor conducted in good faith, these efforts provoked an intense backlash from the local community.

Thousands of local people were strongly opposed to the project, and the confused web of jurisdiction and responsibilities relating to land use in the post-New Order period impeded a decisive resolution. In September 2005, about 1,000 farmers turned out to protest against the project in an event that the National Police had permitted. Just before the event, it revoked the permit and the Central Lombok Regional Police declared the gathering illegal. In the scuffle that followed, at least 35 farmers and two police officers suffered injuries, including gunshot wounds (Detik News 2005). Clashes between farmers and police continued into 2006, resulting in numerous injuries (Hakim 2006).

In an effort to resolve the situation, Angkasa Pura I eventually paid an additional IDR5.4 billion in “peace money” to local farmers as compensation for the violence that had occurred between 2005 and 2006. Landowners who were involved in the process have reported that, to them, the matter was not merely one of financial compensation and relocation but was about “leaving their life history” (Zaenudin 2013). Construction finally began in January 2008 and finished, many months behind schedule, in October 2011. The airport sits on 551 hectares of land, and the total project cost was IDR945.8 billion, which Angkasa Pura I primarily financed (Bustanuddin 2011).

The Lombok International Airport project highlights several critical issues related to land acquisition in Indonesia and its evolution over time. First, it reveals how, under the New Order, the state leveraged its coercive power to serve the interests of big developers with close ties to Suharto. The compensation that it offered to acquire land for the airport project was well below the market value, and a campaign of intimidation as well as the perceived illegitimacy of the process ensured that farmers had little choice but to accept the terms that the state offered and then watch as the land values appreciated rapidly in the following years.

The end of the New Order, rather than providing clarity, exacerbated the confusion, as the division of responsibilities between different stakeholders and levels of government became blurred, leaving no single authoritative institution or statutory process to resolve the issue conclusively. This resulted in several years of protracted conflict, often escalating into violent confrontations. In total, the project began in 1995 and finally ended in 2011, taking 16 years from start to finish.

# 4. NEW YOGYAKARTA INTERNATIONAL AIRPORT (YOGYAKARTA)

The New Yogyakarta International Airport (NYIA) is the largest Indonesian airport development since the passage of Law No. 2 of 2012. It thus offers an excellent example for comparative analysis, as it is possible to contrast the ways in which this project utilized the law with the previous case to identify the impact of the new legislation on the process of compulsory land acquisition. The Special Administrative Area of Yogyakarta (Daerah Istimewa Yogyakarta or DIY) is a semi-autonomous province located adjacent to Central

Java. It is a center of high Javanese cultural and historical significance, a major tourist destination, and a highly productive agricultural area.

Currently, Adisutjipto International Airport serves Yogyakarta. The airport, which is technically an air force base, has a capacity of around 1.5 million passengers. It currently receives around 7 million passengers per year, placing it far over capacity. The size of the runway and the lack of facilities and apron space limit both the number of flights and the size of the aircraft that can land. There are currently only limited international flights from Kuala Lumpur and Singapore and no direct international flights to Australia or Europe.

To boost tourism and commerce, the government began developing a site in the Kulon Progo Regency for a new international airport around 2013. It identified approximately 587 hectares of land for acquisition for the airport, planning the future development of an adjacent commercial center. The expectation is that the airport will be able to handle 15 million annual passengers initially, with multi-phase plans for expansion until 2040.

On 5 September 2014, the Governor of DIY, who is also the hereditary sultan, issued Gubernatorial Decree Number 89/TIM/2014 authorizing the formation of a Land Procurement Preparation Team for the development of the new DIY airport. The issuance of this decree occurred, as Law No. 2 of 2012 mandated, following a procurement report from Angaksa Pura I specifying the site and size of the land needed, a statement of purpose, the budget, the estimated land values, and a rough timeline for construction. The preparation team collected preliminary data on those whom the procurement affected and then conducted public consultation and outreach meetings with the community.

According to court documents and media reports, the outreach period began on 23 September 2014 with a series of meetings held on successive days in the five villages that the proposed project affected. These meetings were contentious. Wahana Tri Tunggal (WTT), a farmers' association and the primary leader of the opposition, later claimed in a court filing that police had blocked members from attending the 23 September event.[5] This prompted the Regent of Kulon Progo Hasto Wardoyo to adopt a more hands-off approach to the public consultation meetings, during which residents who could prove that they had legal title to land in the area attended a one-hour informational presentation and then had to register either their agreement with or their opposition to the plan. Hasto referred to this as a policy of "minimal handling" to avoid escalating conflict (Natalia 2014).

On 31 March 2015, the Governor of DIY issued the Determination of Location Permit based on the report that the preparation team submitted.[6] The Location Permit had an initial validity of two years, with a maximum one-year extension; thus, Angkasa Pura had the obligation to complete the remaining steps in the land acquisition process (including settling all legal challenges via the court and appeal process, appraising and remeasuring the site to determine fair compensation, and acquiring title to the land) within a firm 3-year window or it would lose its Location Permit. Incorporating the lessons learned from a long history of delays related to land acquisition, Law No. 2 of 2012 ensured hard deadlines for every step of the process, and, as soon as the permit was issued on 31 March, it triggered a 30-day countdown for affected parties to appeal the

[5] Putusan Nomor 07/G/2015/PTUN.YK. https://putusan.mahkamahagung.go.id/putusan/909a7284e14fb17874939530362d2757.

[6] Keputusan Gubernur Daerah Istimewa Yogyakarta Nomor 68/KEP/2015. http://jdih.jogjaprov.go.id/storage/1470099660skgub68-2015.pdf.

decision at the State Administrative Court of Yogyakarta, which a group of some 40 farmers that WTT represented did.

On 23 June 2015, the State Administrative Court of Yogyakarta ruled in favor of the farmers, placing the future of the project in doubt.[7] The case immediately underwent an appeal at the Supreme Court, which had 30 days to return a ruling. The Supreme Court, which is the ultimate authority on such matters, overturned the lower court's opinion, allowing the project to proceed. As mentioned earlier, the court system is slowly progressing toward more principled legal reasoning, but the Supreme Court since 2011 has also shown general unwillingness to enter into controversial cases of judicial review, often taking a pro-government position on difficult cases and avoiding ones that raise complex political questions (Butt 2018).

This final ruling on the matter of the Location Permit's legitimacy and legal force took less than 4 months from start to finish and cleared the way for BPN to appoint appraisers to begin assessing the land and determining compensation. For disputed compensation determinations, landowners could appeal first to the District Court, then to the Supreme Court, with each stage of the process being subject to hard deadlines of 15 or 30 working days. Once the Supreme Court has ruled, the legal appeal process has been exhausted and the state agency acquiring the land can deposit the sum at the District Court on consignment. Once the agency has submitted the money to the District Court, the title transfers legally from the landowner to the implementing agency, which in this case is Angkasa Pura.[8]

As the law requires, BPN employed third-party appraisers who determined the value of the land according to MAPPI (*Masyarakat Profesi Penilai Indonesia* or the Indonesian Society of Appraisers) standards. It did not disclose the new appraised values publicly, but it is possible to ascertain a general idea of the level of compensation from public statements and court records. This can then be compared with what the market value for land in that area should be.

The total price that AP I paid to acquire 587 hectares was approximately IDR4.1 trillion, an average of IDR698,466 per square meter. According to the Director of Angkasa Pura I, Danang S. Baskoro, it is possible to break this down according to the following chart (Permana 2017):

**Table 1: Breakdown of Compensation Paid for NYIA**
(All Amounts in Rupiah)

| Type | Hectares | Total Compensation | Price per Square Meter |
|---|---|---|---|
| By Agreement | 342 | 2,800,266,194,388 | 818,791 |
| By Consignment | 51 | 297,924,934,900 | 584,166 |
| Public | 34 | 231,210,459,050 | 680,030 |
| Paku Alam Ground | 160 | 701,512,349,000 | 438,445 |
| Total | 587 | 4,030,913,937,338 | |

Source: Sukma Indah Permana, "Pembebasan Lahan Bandara Kulon Progo Rampung 91%," *Detik Finance*, 21 January 2017.

[7] Putusan Nomor 07/G/2015/PTUN.YK. https://putusan.mahkamahagung.go.id/putusan/909a7284e14fb17874939530362d2757.

[8] The text of Law No. 2 of 2012 can be found at the following url: http://lkbh.uny.ac.id/sites/lkbh.uny.ac.id/files/UU%20No%202%20Tahun%202012.pdf.

A number of cases filed at the District Court in Wates, which has jurisdiction over the Kulon Progo Regency, confirm these tables:

**Table 2: Sample of Compensation Paid to Titleholders in Kulon Progo**

| **Case #** | **Size** ($m^2$) | **Price** (IDR) | **IDR/$m^2$** |
|---|---|---|---|
| Putusan Nomor 7/Pdt.G/2018/PN Wat | 2,233 | 1,061,066,000 | 475,175 |
| Putusan Nomor 15/Pdt.G/2017/PN Wat | 2,859 | 2,153,013,500 | 753,065 |
| Putusan Nomor 25/Pdt.G/2017/PN Wat | 3,320 | 1,743,798,400 | 525,240 |
| Putusan Nomor 12/Pdt.G/2018/PN Wat | 1,535 | 1,194,907,500 | 778,441 |
| Putusan Nomor 26/Pdt.G/2017/PN Wat | 2,880 | 1,994,622,000 | 692,577 |
| Putusan Nomor 105/Pdt.P.K/2017/PN Wat | 4,008 | 3,073,642,900 | 766,877 |
| Total/Avg | 16,835 | 11,221,050,300 | 666,531 |

Source: The directory of court decisions is obtainable from the Supreme Court's online record system.

The compensation in these cases ranged between IDR475,175 and IDR778,441, averaging IDR666,531 per square meter, which is roughly in line with the IDR698,466 table estimated above. The next question is whether this represents a fair value for land in the Kulon Progo Regency in 2015.

Determining the market value of real estate in Indonesia can be challenging. While BPN has taken steps in recent years to improve its record keeping and the accuracy of its data, it is still a relatively opaque institution, and official sales prices in tax records are often unreliable as the parties frequently under-report the sales price to lower their tax burden (Tamtomo et al. 2008). A more accurate picture is obtainable through site visits and court records.

An interview with a local landowner revealed that land in 2013 was selling for between IDR180,000 and 200,000 per square meter (Kresna 2018). Several 2016 lawsuits list the expected value of land in the area at between IDR800,000 and 2 million per square meter.[9] During a site visit to the area in October 2018, the prices for land in proximity to the airport were reported to me at between IDR1 and IDR2 million per square meter.[10] The table below summarizes a range of estimated land valuations:

**Table 3: Approximate Land Values in Kulon Progo 2013–18**

| **Year** | **Range (IDR)** |
|---|---|
| 2013 | 180,000–200,000 |
| 2015 | 475,175–778,441 |
| 2016 | 800,000–2,000,000 |
| 2018 | 1,000,000–2,000,000 |

The higher land prices from 2016 onward reflect inflationary pressure from speculative land purchases after the issuance of the airport's Location Permit. The valuation of the land in 2015 increased significantly over the market value in 2013, indicating that the

[9] Putusan Nomor 142/Pdt.G/2016/PN Wat, Case Nomor 134/Pdt.G/2016/PN Wat, Case Nomor 135/Pdt.G/2016/PN Wat, and Case Nomor 136/Pdt.G/2016/PN Wat.

[10] Site visit to Kulon Progo Regency, 26 October 2018.

price that the state offered represents a reasonable replacement value according to market-based estimates. Moreover, there is evidence that the procedural requirements mandated by Law No. 2 of 2012 ensured that a fair price was offered.

In 2014, Angkasa Pura I estimated that it would need IDR900 billion for land acquisition (Sukirno 2014). This averages IDR153,322 per square meter or slightly less than the estimated market price in 2013. After an independent appraisal team revalued the land, the valuation more than quadrupled to IDR4.1 trillion. This helps to explain why thousands of local landowners initially resisted the project but, as the parties worked through the process, a majority eventually accepted the terms that AP I offered. By January 2017, of the 587 hectares undergoing acquisition, the sides had failed to reach agreement on only 51 or about 9% (Permana 2017). Even WTT, the group that sued to stop the project in 2015, eventually accepted the state's improved offer terms.

# 5. CONCLUSION AND POLICY IMPLICATIONS

The comparison of these two cases reveals that Law No. 2 of 2012 has materially improved the process of compulsory land acquisition in Indonesia and moved it toward a more equitable policy framework. Table 4 summarizes these improvements:

**Table 4: Summary of Pre- and Post-Law Provisions**

| | Lombok International Airport (Pre-Law No. 2 of 2012) | NYIA (Post-Law No. 2 of 2012) |
|---|---|---|
| Financial Compensation[a] | IDR15,704 | IDR698,466 |
| Legal Appeal Mechanism | No | Yes |
| Evidence of State Coercion/Intimidation | Yes | No |
| Third-Party Appraisal Team | No | Yes |
| Recognition of Non-Titleholder | No | No |
| Project Length | 16 years | 4 years[b] |

[a] Adjusted to 2018 currency, using the inflation index on www.inflationtool.com.

[b] The Location Permit was issued in 2015 and the airport became operational in 2019.

The law has brought clarity to what was a confusing and often contradictory legal landscape. It delineates the authority and responsibility for procedural compliance and imposes hard deadlines that have greatly accelerated project timelines. The completion of the NYIA took about 4 years, while in Lombok the process took 16 years. Not only the Asian financial crisis but also the unclear lines of authority and legal hierarchies that had prevailed prior to the enactment of Law No. 2 of 2012 caused the delay. This effect is also present in other sectors, such as toll roads. According to toll road regulator BPJT, from 2004 to 2014, approximately 250 km of toll roads entered operation. In the last 5 years, over 700 km have become operational largely due to the impact of the law.[11]

The law has also materially improved the terms of financial compensation, ensuring that they reflect more accurately the fair replacement value based on market price estimations. There is no credible evidence that the state used coercive force in the NYIA project to compel landowners to accept terms, as was the case in Lombok. Indeed, the

[11] The progress of toll roads at the national level is updated regularly here: Badan Pengatur Jalan Tol, Jalan Tol Beroperasi (Operational Toll Road Report). http://bpjt.pu.go.id/konten/progress/beroperasi.

staunchest opponents of the project eventually accepted the state's terms and voluntarily released the land after the law's procedural and legal safeguards ensured a fair level of compensation. Although the Supreme Court ultimately overturned the case brought to the State Administrative Court, the existence of a legal mechanism through which affected landowners can challenge the state's agenda is an important consideration and one that previously did not exist.

There are some areas that the law does not address adequately, particularly recognizing non-titleholders and determining intangible losses. In the first instance, there were dozens of shrimp farmers in Kulon Progo who had been working on publicly owned land for many years. Though they had access to and use of the land, they did not own the title and therefore the law did not recognize them. This is a potential shortcoming of the law, as official land titling in Indonesia often overlaps with customary land titles and records are frequently inaccurate or incomplete. Many of the shrimp farmers sued in the District Court, which awarded them a partial judgment comprising sufficient capital to start a comparable shrimp farm in another location.[12] The Supreme Court later overturned these decisions,[13] but the willingness of the District Court to base its ruling on the spirit rather than the strict letter of the law is a noteworthy development.

There is also an issue related to compensation for intangible losses for registered titleholders. In the case of the NYIA, out of 11,000 affected people, 300 refused to vacate the site (Muryanto 2018). Having exhausted their legal options to appeal, police forcibly evicted them. According to these families, financial reparation alone was inadequate to compensate them for the loss of their land. They indicated that they were fearful of losing their identity, which is closely associated with the land. They deemed the offers of employment at the airport to be inadequate, as many of them enjoyed working on the land and expressed no interest in becoming baggage handlers or security guards. They wanted to be relocated to another site that was comparable to their current land and where they could reasonably replicate their current living conditions.[14] The Indonesian government was unable to meet this demand to their satisfaction.

This highlights the difficulty of determining compensation for intangible losses. Officials at BPN confirmed in an interview that determining intangible losses is difficult and that no universally agreed standard exists for doing so, noting that the majority of landowners prefer to accept cash compensation in the form of the market value of the land. They noted that more complex compensation schemes, such as land banking exchanges (i.e., replacement land-for-land) or lease-backs, are virtually unheard of in Indonesia due to the difficulty in implementing them. They are also still working on standardizing the law's implementation across regions and sectors.[15] In a policy environment in which the judiciary and the National Land Agency are still in the process of developing institutional capacity, a more straightforward approach to compulsory land acquisition, such as the one currently being implemented under the authority of Law No. 2 of 2012, may be the most efficient and most equitable. As these institutions continue to acquire experience from the implementation of a relatively straightforward legal tool, such as Law No. 2 of 2012, the chances of successfully implementing more complex policies, such as land banking, are likely to improve.

[12] Putusan Nomor 60/Pdt.G/2016/PN Wat.

[13] See Putusan Nomor 3525 K/Pdt/2016, Nomor 3291 K/Pdt/2016, or Nomor 3532 K/Pdt/2016 as examples. The Supreme Court ruled the same way in overturning dozens of similar cases.

[14] Author interview with a representative from PWPP-KP, the NGO working with the remaining hold-out families, Yogyakarta, 2 October 2018.

[15] Author interview with BPN officials, Jakarta, 22 January 2019.

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