

PROVISION OF LAND FOR REALIZING THE DEVELOPMENT FOR PUBLIC INTERESTS
(Presidential Regulation No. 36/2005 dated May 3, 2005)

BY GRACE OF GOD THE ALMIGHTY,
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering:

- a. that since the need for land from the development for public interests increases, the provision of the land needs to be realized quickly and transparently by observing the principle of respect to legitimate land titles;
- b. that the provision of land for realizing the development for public interests as meant in Presidential Decree No. 55/1993 is no longer suitable as a legal basis in the framework of realizing the development for public interests;
- c. that based on the considerations in letters a and b, it is necessary to stipulate a presidential regulation on the provision of land for realizing the development for public interests;

In view of:

1. Article 4 paragraph (1) of the Constitution of 1945 (BN No. 7152 pages 14A - 23A);
2. Law No. 5/1960 on basic regulation of agrarian principles (Statute Book of 1960 No. 104, Supplement to Statute Book No. 2043);
3. Law No. 51/Prp/1960 on prohibition on the use of land without permit from the righteous party or proxy (Statute Book of 1960 No. 158, Supplement to Statute Book No. 2106);
4. Law No. 20/1961 on revocation of rights to land and materials above the land (Statute Book of 1961 No. 288, Supplement to Statute Book No. 2324);
5. Law No. 24/1992 (BN No. 5331 pages 2A - 8A and so on) on layout (Statute Book of 1992 No. 115, Supplement to Statute Book No. 3501);

D E C I D E S :

To stipulate:

THE PRESIDENTIAL REGULATION ON PROVISION OF LAND FOR REALIZING THE DEVELOPMENT FOR PUBLIC INTERESTS

CHAPTER I
GENERAL PROVISION
Article 1

Referred to in this presidential regulation as:

1. Central Government, hereinafter called the Government, shall be the President of the Republic of Indonesia holding the executive power of the Republic of Indonesia as meant in the Constitution of 1945.
2. Regional Governments shall be governors, regents or mayors and regional apparatuses as the regional executive board.
3. Provision of Land shall be every activity to obtain land by means of giving compensation to the party releasing or giving up land. Building, plant and materials related to land or by revocation of land title.
4. Territorial Layout Plan shall be result of territorial layout planning.
5. Public interests shall be interests of most people.
6. Relinquishment or delivery of land title shall be an activity to release legal relations between holder of land title and the controlled land by means of giving compensation on the basis of deliberation.
7. Party relinquishing or giving up land, building, plant and other materials related to land shall be individual, statutory body, institution, business unit having right to control land and/or building as well as plants above the land.
8. Land Title shall be a right to land plot as regulated in Law No. 5/1960 on basic regulation of agrarian principles.
9. Land Provision Committee shall be a committee established to help procure land for realizing the development for public interest.
10. Deliberation shall be an activity containing a process wherein opinions and intentions are heard, disclose and accept in a bid to achieve an agreement on the model and amount of compensation and other issues related to land provision on the basis of voluntary and equity between the party having land, building, plants and other materials related to land, and the party needing the land.

11. Compensation shall be substitution to physical and/or non-physical losses resulting from the provision of land for party having land, building, plants and/or other materials related to the land, which can provide the continuation of life better than the social and economic life before the provision of land.
12. Land Price Appraising Team/Institution shall be an professional and independent institution/team to determine the value/price of land to be used as the basis for achieving agreement on the basis of the value/amount of compensation.

CHAPTER II PROVISION OF LAND

Article 2

- (1) Provision of land for realizing the development for public interests by the government or regional governments shall be executed by means:
- relinquishing or giving up land title; or
 - revoking land title.
- (2) The provision of land for purposes other than the realization of the development for public interests by the government or regional governments shall be done by means of transaction, exchange or other methods agreed voluntarily by the relevant parties.

Article 3

- (1) The relinquishment or delivery of land title as meant in Article 2 paragraph (1) shall be based on the principle of respect to land title.
- (2) The revocation of land title as meant in Article 2 letter b shall be based on the provisions of Law No. 20/1961 on revocation of right to land and materials above the land.

Article 4

- (1) Provision and plan for the fulfillment of the need for land needed for the realization of the development for public interests only can be done if it is based on territorial layout plan already stipulated previously.
- (2) In the case of regions not yet stipulating territorial layout plan, the provision of land as meant in paragraph (1) shall be based on the existing territorial or city spatial planning.

- (3) In the case of land being already stipulated as location of the realization of development for public interests on the basis of a decision on stipulation of location stipulated by regents/mayors or governors, whoever intends to purchase land above the land shall secure written approval first from the regent/mayor or governor in accordance with their respective scopes of authority.

Article 5

The development for public interests realized by the government or regional governments shall include:

- public road, toll road, railway track (on ground, above ground space or underground), drinking-water network, water disposal and sanitation networks;
- reservoir, embankment, irrigation and other water-resource buildings;
- public hospital and public health center;
- seaport, airport, train station and terminal;
- worship facilities;
- educational and school facilities;
- public market;
- public cemetery;
- public security facility;
- post and telecommunications;
- sport facilities;
- radio and television broadcast station and supporting facilities;
- offices of the government, regional government, representative of foreign countries, the United Nations, and/or international institutions subordinate to the United Nations;
- facilities of the Indonesian Military and Police in accordance with their main tasks and functions;
- social facilities and detention house;
- nature and culture preserve;
- park;
- social center;
- power plant, transmission and distribution.

CHAPTER III

COMMITTEE, DELIBERATION AND COMPENSATION

Part One

Land Provision Committee

Article 6

- (1) Provision of land for public interests in regencies/cities shall be done with the support of regental/municipal land provision committee established by regents/mayors.

- (2) The Jakarta Provincial Land Provision Committee shall be established by the Governor.
- (3) Provision of land located in two regencies/cities or more shall be done with the support of the provincial land provision committee established by the governor.
- (4) Provision of land located in two provinces or more shall be done with the support of the land provision committee established by the Minister of Home Affairs, consisting of representatives of the government and regional governments concerned.
- (5) The membership composition of the land provision committee as meant in paragraphs (1), (2) and (3) shall consist of representatives of regional apparatuses concerned.

Article 7

The land provision committee shall be assigned to:

- a. study and make inventory of land, building, plant and other materials related to land whose right will be relinquished or given up;
- b. study the legal status of land whose right will be relinquished or given up and supporting documents;
- c. estimate and recommend the amount of compensation for land whose right will be relinquished or given up;
- d. give explanation or counseling to the community affected by the development plan and/or holders of land title with regard to the plan and objective of the land provision in the form of public consultation through interview, printed media or electronic media so as to be ascertained by the community affected by the development plan and/or holders of land title;
- e. deliberate with holders of land title and government and/or regional government institutions needing land in the framework of stipulating the model and/or amount of compensation;
- f. witness the delivery of compensation to holders of rights to land, building, plant and other materials above the land;

- g. make account of the relinquishment or delivery of land title;
- h. administer and document all land provisions documents and give up them to the competent party.

Part Two Deliberation Article 8

- (1) Provision of land for the realization of the development for public interests shall be done through deliberation in the framework of achieving agreement on:
- a. the realization of the development for public interests in the said location;
 - b. the model and amount of compensation.
- (2) The deliberation shall be held in the place stipulated in invitation.

Article 9

- (1) The deliberation shall be held directly between holders of rights to land, building, plants and other materials related to the land, land provision committee and government or regional government institutions needing the land.
- (2) In the case of the number of land-title holders not enabling the deliberation to take place effectively, the deliberation as meant in paragraph (1) shall be held by the land provision committee and government or regional government needing the land and representatives appointed among and by holders of land titles, concurrently acting as their proxies.
- (3) The appointment or representatives or proxies of the right holders as meant in paragraph (1) shall be done in writing, on a sufficiently duty stamped paper acknowledged by heads of villages/sub-districts or letter of appointment/power of attorney made before the authorized official.
- (4) The deliberation as meant in paragraphs (1) and (2) shall be led by the land provision committee.

Article 10

- (1) In the case of activities of development for public interests being unable to transfer or remove in a

technical layout manner to other place or location, the deliberation shall be held maximally in 90 (ninety) calendar days, starting from the date of first invitation.

(2) In the case of agreement being not achieved after the deliberation as meant in paragraph (1) is held, the land provision committee shall stipulate the model and amount of compensation as meant in Article 13 and consign the compensatory money to the district court overseeing the location of the land.

(3) In the case of ownership dispute arising after the stipulation of compensation as meant in paragraph (2), the committee shall consign the compensatory money to the district court overseeing the location of the land.

Article 11

In the case of holders of land title and government and/or regional government institutions needing land already reaching agreement in the deliberation, the land provision committee shall issue a decision on the model and amount of compensation in accordance with the agreement.

Part Three Compensation Article 12

The compensation in the framework of provision of land shall be granted to:

- a. land title;
- b. building;
- c. plant;
- d. other materials related to the land.

Article 13

(1) The model of the compensation can be in the form of:

- a. money; and/or
- b. substitute land; and/or
- c. resettlement.

(2) In the case of holders of the land title not expecting the model of compensation as meant in paragraph (1), the relevant can be given compensation in the form of capital participation (share) in accordance with the provisions of the law in force.

Article 14

The substitution to the land plot controlled by communal right shall be granted in the form of the development of public facilities or other forms beneficial to local communities.

Article 15

(1) The basis for calculation of the amount of compensation shall be based on:

- a. the selling value of tax object or concrete/real value by observing the selling value of tax object in the current year on the basis of stipulation of the land price appraisal team/institution appointed by the committee;
- b. selling value of building estimated by regional apparatus in charge of building affairs;
- c. selling value of plant estimated by regional apparatus in charge of agricultural affairs.

(2) In the framework of stipulating the basis for calculation of compensation, the land price appraisal team/institution shall be stipulated by regent/mayor or governor in the case of the Jakarta Capital Special Region.

Article 16

(1) The compensation shall be given up directly to:

- a. holders of land title or the righteous parties in accordance with the law in force;
- b. nazhir, in the case of wakaf land.

(3) In the case of land, building, plants or materials related to the land being owned collectively by several persons, while any of the land-title holders cannot be found, the compensation becoming the right of the person who cannot be found shall be consigned in the district court overseeing the location of the said land.

Article 17

(1) Holders of land title not accepting the decision on the land provision committee can raise objection to regent/mayor or governor or the Minister of Home Affairs in accordance with their respective scopes of authority, accompanied by explanation about causes and reasons for the objection.

(2) Regents/mayors or governors or the Minister of Home Affairs in accordance with the authority shall make

efforts to settle the model and amount of the compensation by observing opinions and intentions of the holders of land title or their proxies.

- (3) After hearing and studying the opinions and intentions of holders of land title as well as considerations of the land provision committee, regent/mayor or governor or the Minister of Home Affairs in accordance with their respective scopes of authority shall issue a decision that can validate or change the decision of the land provision committee on the model and/or amount of compensation to be granted.

Article 18

- (1) If the settlement taken by regents/mayors or governors or the Minister of Home Affairs remain unacceptable to holders of land title and location of the development cannot be removed, the regents/mayors or governors or the Minister of Home Affairs in accordance with their respective scopes of authority shall submit recommendation about the settlement by means of revoking land title on the basis of Law No. 20/1961 on revocation of rights to land and materials above the land.
- (2) The settlement recommendation as meant in paragraph (1) shall be submitted by regents/mayors/governors/Minister of Home Affairs in accordance with their respective scopes of authority to the Head of the National Land Agency with a copy made available to the minister of institution needing the land and the Minister of Law and Human Rights.
- (3) After receiving the settlement recommendation as meant in paragraphs (1) and (2), the Head of the National Land Agency shall consult with minister of the institution needing the land the Minister of Law and Human Right.
- (4) Request for revoking the land title shall be conveyed to the President by the Head of the National Land Agency, signed by the minister of institution needing the land and the Minister of Law and Human Rights.

Article 19

In the case of land being occupied without license from the righteous party or proxy, the settlement

shall be based on Law No. 51 Prp/1960 on prohibition on the use of land without permit from the righteous party or proxy.

CHAPTER IV PROVISION OF SMALL-SCALE LAND

Article 20

The realization of development for public interests needing land with the size not exceeding one hectare can be done directly by government institution needing the land with holders of land title by means of transaction or exchange or other methods agreed by the both parties.

CHAPTER V TRANSITIONAL PROVISION

Article 21

With the enforcement of this presidential regulation, technical directives for Presidential Decree No. 55/1993 on provision of land for the realization of development for public interests shall remain effective as long as they do not contravene this presidential regulation.

CHAPTER VI CONCLUSION

Article 22

Further provisions on procedures and mechanism of provision of land for the realization of development for public interests shall be regulated by a regulation of the Head of the National Land Agency.

Article 23

With the enforcement of this presidential regulation, Presidential Decree No. 55/1993 on provision of land for realizing the development for public interests shall be revoked and declared null and void.

Article 24

The presidential regulation shall come into force as from the date of stipulation.

Stipulated in Jakarta

On May 3, 2005

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Sgd

Dr. H. SUSILO BAMBANG YUDHOYONO

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