

**Towards a Fair Balance Compensation of Land Acquisition  
For High Economic Value Infrastructure Development  
(CASE STUDY: DEPOK - ANTASARI TOLL ROAD, WEST JAVA, INDONESIA)**

**THESIS**

A thesis submitted in partial fulfilment of the requirements for  
The Master Degree from the Institut Teknologi Bandung and  
The Master Degree from the University of Groningen

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**DOUBLE MASTER DEGREE PROGRAMME**  
**Development Planning and Infrastructure Management**  
**School of Architecture, Planning and Policy Development**  
**Institut Teknologi Bandung**  
**and**  
**Environmental and Infrastructure Planning**  
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## Abstract

Reaching equilibrium between the need to build infrastructure and the importance of fair compensation is very challenging specifically for economic overhead capital since it endorses productive activities and positive spill-over. The benefits of high economic value infrastructure such as toll road, airport, and harbour can be enjoyed by government, business entity and society. On the other hand, compensation for affected landowners should be taken into consideration.

In Indonesia, toll road development is considered as part of infrastructure for public interest. This circumstance implies that government could enforce the law to acquire land passing by the project. This research is intended to explore land acquisition for high economic value infrastructure development for public interest. By using qualitative analysis and field research, the study aims to explore compensation scheme that would embrace the equilibrium in Depok-Antasari toll road development, Depok, West Java.

During interviews with affected community, several equity issues found as a combination of their desires, needs, and expectation within land acquisition process. By analysing these issues and perspectives from other involved parties, inhibiting factors of Depok-Antasari toll road development can be captured. Apart from it, the research finds four essential criteria for fair balance compensation namely *comprehensive regulations, open system, participation, and mediating system*.

This research shares some policy implications in Indonesia for each stage of governance levels which are strategic level, tactical level, operational level and reflexive by incorporating criteria for fair balance compensation. In general, it is recommended that non-financial compensation should have more attention to pursue fair balance compensation especially in dealing with inherent values of the land. In case of Depok-Antasari toll road development, resettlement can be an alternative option to achieve fair balance compensation.

**Keywords:** *land acquisition, fair compensation, infrastructure development, high economic value infrastructure*

## **Guideline for Using Thesis**

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## Preface

Understanding the importance of high economic value infrastructure for region, government, business entity and society can be easily captured in many researches. Yet, providing this infrastructure in urban areas is a different matter. It could be a prolonged problem when dealing with private landownership. Tug of interests between government and affected people in terms of fair compensation could inhibit the development. Exploring this situation in real condition is very challenging for my curiosity.

In Indonesia, conflicts over land related to high economic value infrastructure development such as toll road is nothing new. While in the development stage, disputes regarding fair compensation occur between affected people and proponent. Indeed, after the completion of the project, landowners' dissatisfaction still can be perceived. As a person engaging in land policy issues, this circumstance drags my attention to look closely on current practice and trend in infrastructure planning. Depart from this, I took master degree of environmental and infrastructure planning to broaden my knowledge and learn many relevant subjects that would support my upcoming working responsibility. All praises belong to God Almighty for blessing me with this opportunity.

Actually, my concern on land acquisition is one part of many pieces in land development. In larger scale, this subject has relation with infrastructure planning. Even though I have an opportunity to conduct field research, making the topic into coherent and understandable writing is very much an exhausted effort. This research would not have been possible without support from several open-handed persons sharing their thought, energy and time. In this occasion, I would like to address my highest appreciation to my supervisors, Niels Heeres and Denny Zulkaidi, who have provided broad insight and clear guidance on the subject of land acquisition, fairness, and affordability issues. In addition, many thanks are dedicated to all interviewees who share invaluable knowledge and expertise in their field.

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**Syaefulloh Djaelani Soleh**  
Groningen, August 2013

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## Abbreviations

BPN	Badan Pertanahan Nasional <i>National Land Agency</i>
BPJT	Badan Pengatur Jalan Tol <i>Toll Road Authority</i>
P2T	Panitia Pembebasan Tanah <i>Land Acquisition Committee</i>
TPT	Tim Pengadaan Tanah <i>Land Procurement Team</i>
PPJT	Perjanjian Pengusahaan Jalan Tol <i>Toll Road Concession Agreement</i>
HPSPJT	Harga Perkiraan Sendiri Perjanjian Jalan Tol <i>Self-Estimation Price for Toll Road Concession</i>
TDR	<i>Transfer Development Rights</i>
SPDC	<i>Special Purpose Development Corporation</i>
ADB	<i>Asian Development Bank</i>
NGO	<i>Non Government Organization</i>
KPA	Koalisi Pembaharuan Agraria <i>Agrarian Reform Coalition</i>
BLU-BPJT	Badan Layanan Umum – BPJT <i>Public Service Agency - BPJT</i>
NJOP	Nilai Jual Obyek Pajak <i>Selling Value of Tax Object</i>
PLDB	Perjanjian Layanan Dana Bergulir <i>Revolving Fund Service Agreement</i>
RTRW	Rencana Tata Ruang Wilayah <i>Spatial Plans</i>
PBB	Pajak Bumi dan Bangunan <i>Land and Building Tax</i>
BPHTB	Bea Perolehan Hak atas Tanah dan Bangunan <i>Land and Building Acquisition Tax</i>

# Chapter 1 Introduction

## 1.1. Background

Providing public infrastructure is a particular role that the government should perform to foster economic growth especially in the region where the facilities are built (Parkin & Sharma, 1999). Making the lofty goal becomes reality is not an easy task to be done especially when dealing with land. Countries adopting a private-landownership system have difficulties to provide land for infrastructure development in urban areas. Indeed, for large-scale project, state-owned land cannot afford to fulfil its necessity. Consequently, considerable portion of private land should be acquired to comply with the need of infrastructure development. In addition, the issue can be more exacerbated in which the development process would affect many parcels of land.

This circumstance would endorse the government to arrange some considerations before executing their eminent domain power. In general, the discussions regarding eminent domain power more on global scope while actually the local level has strong conditioning effect on the power itself (Azuela, 2009). In this case, taking into account the local people's interests is very important to achieve sustainable infrastructure services (OECD, 2006). Ignoring affected people's interest in term of benefits and costs may trigger social conflict (Parkin & Sharma, 1999). Therefore, land acquisition should equalize public infrastructure spending on land and protection of private land ownership to avoid frictions among stakeholders and maintain public confidence in law (FAO, 2008).

Meanwhile, public infrastructure can be categorized in certain ways. Hansen (1965) elaborates this investment in terms of public overhead capital namely "social" overhead capital (SOC) and "economic" overhead capital (EOC). The former consists of non-economic interests designed to enhance human capital while the latter is intended to endorse productive activities. Parts of EOC are toll roads, highways, airports, harbours, and communication networks. Apart from supporting economic activities, EOCs also generate positive spill-over (Eberts, 1990). In particular, high economic value infrastructure definitely yields advantages that could be harnessed by government, private companies, and other beneficiaries in the form of revenues, profits, and services. On the other hand, local inhabitants whose lands are taken for the development, indeed, should also attain fair compensation.

Government may use its power as an instrument to attain land from private owner to satisfy public infrastructure consumption (Syms, 2002; Dewberry & Couture, 2004). By conducting this power, land developments are managed directly by the state (Alias & Daud, 2007). Legally, these actions expropriate land from affected people by respecting certain strict rules and procedures (ADB, 2007). These rules are commonly produced by taking into consideration legal, social and economic aspects within the region (Ding, 2007). Understanding these aspects is truly important to ingratiate landholder's feeling. Indeed, Jain & Xavier suggest that land is not only an asset or factor of production but also an essential social aspect and part of landholder's emotional merit in several countries (Alias & Daud, 2007).

Each country implements its own techniques to acquire land from private owners according to regulation and the rule of law (Kitay, 1985). Procedures and mechanism of each policy may differ among countries in the world such as compulsory land acquisition in China

(Chan, 2003), zoning regulation in Turkey (Yomralioglu, Uzun, & Nisanci, 2008), land use planning in the Netherlands (Hobma & Wijting, 2007) and voluntary acquisition in Estonia (Viitanen & Kakulu, 2009). Other techniques such as voluntary bargain and sale; leasehold interests and options; and barter or exchange are also well-known and can be offered to affected people (Kitay, 1985). In addition, benefit-sharing policy; land pooling and readjustment policy; and Transfer Development Right policy could be more attractive than other forms of compensation (The World Bank, 2011). However, its implementation needs to be well-examined to pursue a fair balance by exploring land acquisition techniques for certain infrastructure investments especially high economic value infrastructure development.

## **1.2. Research Problem**

Toll road development is one of high economic value infrastructures that contribute revenue for governments and toll road operator companies. Besides that, time savings brought by this advancement may generate added value to the region by opening quick access to long distant place or urban markets thus it would encourage production of domestic goods; widening labour pool, production inputs and expanding market to other potential area thus it would decrease labour rates and input/output prices; and changing land value and spatial patterns (Gunasekera, Anderson, & Lakshmanan, 2008). Specifically, highway capital provides significant spill-over effects for intermediate government by creating good investment climate (Berechman, Ozmen, & Ozbay, 2006). In addition, transportation enhancements would generate higher land values and/or property prices, or enhanced development opportunities especially for owners and developers close to the area (Iacono, Levinson, Zhao, & Lari, 2009).

Toll road definitely has specific characteristics that differentiate them from other infrastructures. Even though toll roads may have similar primary purposes like streets, many exclusive entities embedded on its function. People cannot use it for walk, talk, recreation or play. Besides that, it only allows certain kind of vehicles to pass this long tract. On the other hand, streets can be preserved to facilitate other infrastructure and be used for special transient events such as parades, fairs, or markets (Rainer, 1990).

In Indonesia, toll road also brings significant benefit to government, private companies, and other beneficiaries. Toll road development would influence regional growth and economic development; increase mobility and accessibility of people and goods; time-saving for travellers; and promising Return of Investment for private companies (BPJT, 2011). Meanwhile, in regards to landowner's perspective, forms of compensation are a serious issue. In many projects, affected people often request for more compensation regarding their land and building price while the others would not move due to strong community ties, sense of closeness to the land both economically and emotionally (Prakoso, 2008). These circumstances have a considerable impact to the highway development. In comparison to other Asian countries such as Malaysia and China, provision of toll roads is significantly lagging behind, although the first development of toll road has been started earlier (Nurfitriani, 2011).

It is obvious that there should be a fair balance of benefit among involved stakeholders to continue the infrastructure development. In other words, there should be suitable land acquisition techniques which can fulfil the needs of landowners while at the same time these mechanisms should not burden the budget as well as generate feasible outcomes for government and private companies. Several rules and regulations have been issued to arrange land acquisition process to be more fair and eligible. Presidential Decree No. 36/2005 implies fast and transparent

mechanisms to conduct land acquisition. Subsequently, Presidential Decree No. 65/2006 amends previous regulation to gain more legal certainty yet considering occupant land rights. Indeed, Act No.2/2012 about Land Acquisition for Development of Public Interest mentions that infrastructure developments are needed to achieve equitable and prosperous society. On the other hand, these good purposes should be implemented by taking into account the principle of humanity, democratic and fairness. Moreover, alternative forms of compensation are guaranteed by the rule of the law such as land, relocation, and shareholding. The last option is added on Act No. 2/2012.

Actually, principles adopted in the new regulations are also upholding the land rights as proclaimed by previous regulations in terms of fairness. This principle should be executed in any kind of public investment including high economic value infrastructure development. Compensations given to public capital investment within SOC may not be the same with EOC's since it would contribute considerable economic advantages. Indifference of examining this issue would lead to equity problems. To cope with, certain land acquisition techniques may provide procedures and mechanisms to achieve fairness. These techniques should able to benefit all stakeholders involved in the development. In this case, both government and private companies need to conduct land acquisition techniques which are affordable for them in terms of budgeting. This would, indeed, give policy implications for land acquisition in Indonesia. Therefore, the main question of this research is *“What kind of land acquisition techniques that potentially could provide fair and affordable compensation scheme in high economic value infrastructure development and in what ways they could achieve such conditions.”*

### **1.3. Research Objectives**

This research will perform several objectives to answer the research question, as follow:

- To describe land acquisition process used in high economic value infrastructure development
- To identify equity problems in regards to high economic value infrastructure development
- To assess criteria for a fair and affordable compensation scheme that is more acceptable for involved stakeholders.
- To identify land acquisition techniques that support the criteria
- To formulate policy implications for land acquisition in dealing with high economic value infrastructure development in Indonesia

### **1.4. Research Significance**

This research is expected to share advantages to science, institution involved in the field of study and society at large. A fair balance compensation of land acquisition techniques in toll road development could be a major contribution to science since a lot of toll road developments in Indonesia still faces many problems. The result of this research could be considered to achieve mutually beneficial cooperation among stakeholders. Thus, affected people may obtain economic advantages during acquisition process and after completion of the project. At the same time, the government could manage their expenditures efficiently and receive revenue. Apart from that, toll operators could extract benefit from their investment. In this case, provision of infrastructure would be of benefiting government, landholders, and toll operators.

Furthermore, this research is intended to foster policy implementation in the field to achieve a balance among stakeholders involved in the project. Therefore, it is essential to examine the possibility of implementing preferable land acquisition techniques in toll road

development. This certainly could be a good lesson for any developing countries experiencing such hindrances in infrastructure development for public purpose like Indonesia.

### 1.5. Research Framework

To guide how the research conducted, research framework is needed to ensure that researcher follows certain defined procedures and mechanism to find answers of research problem. This framework will cover steps to achieve each research objective before formulating answer to central question on research problem.

In outline, there are three main layers within the framework namely urban land policy, land acquisition, and the case study area. The first layer will explain more about land policy especially in urban area in which some criteria toward fair and affordable compensation scheme are yielded. The second layer will provides common and recent land acquisition techniques which could pursue a fair-and-affordable compensation scheme in high economic value infrastructure development. By the new regulations, there is a large opportunity to adapt certain land acquisition techniques in Indonesia. The last layer will generate stakeholders’ perception pertaining to land acquisition process of the case study area.

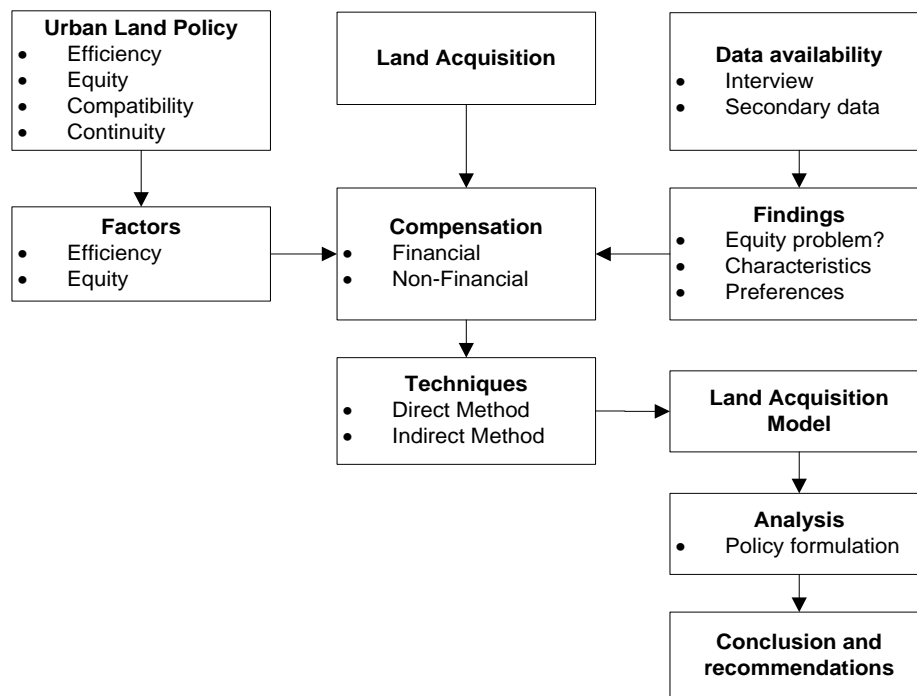


Figure 1.1 Research Framework

To begin with, urban land policy provides four significant factors that can be applied in any land policy especially in urban area which are efficiency, equity, compatibility and continuity (Doebele, 1983). The last two factors are very common in urban land policy in Indonesia in which they are already manifested in many infrastructure development and merely intra-governmental actors involved. However, the first two factors, efficiency and equity need

much more attention due to their impact to the affected people mostly as well as government and private companies. Depart from these factors; certain criteria will be formulated to scrutinize forms of compensation and land acquisition techniques that could meet the standard and feasible to be implemented in high economic value infrastructure development..

This research will also conduct interviews to related stakeholders in order to obtain data and information needed. These data should provide comprehensive knowledge regarding equity problems in the case study area. Even though the possibility of these problems perceived by affected landowners might high, chance of these occurrence appear on the other stakeholders should be examined. Aside from it, characteristics and expectations of each stakeholder gathering from either interviews or secondary data could share various perspectives. Finally, analysis is made to inspect both finding during interviews and proposed land acquisition techniques. The analysis will bear a policy formulation that could be adopted to pursue a fair and affordable compensation scheme in high economic value infrastructure development.

## **1.6. Research Methodology**

There are methods and procedures which have to be conducted to answer each research objective. After determining certain land acquisition techniques that could provide specific compensation forms needed, there will be further analysis on each technique. To support this, adequate data is needed to know whether particular compensation schemes are fair and affordable. Data can be gathered from secondary sources and primary survey.

Primary data will be gathered by observation and interviewing key stakeholders which are affected landowners, local government, land agency's officers, toll road companies, and academics. Interview with affected landowners will yield key elements of equity problems whereas other respondents will share aspects of fairness and affordability. These data will be analyzed by using qualitative method to obtain key factors of equity problems as well as criteria of fairness and affordability. Meanwhile, secondary sources can be gathered from literatures, the internet, and visiting relevant institutional actors. Content analysis will be conducted to explore trend and practice of land acquisition techniques in the world that could lead to fair compensation scheme.

## **1.7. Research Design**

The thesis is organised into six chapters and have been outlined as follows:

- **Chapter I. Introduction**

This chapter consists of background, research problem, research objectives, research question, research framework, research methodology, research scope, and research design.

- **Chapter II. Theoretical Review**

This chapter consists of literature review that explores some relevant theories related to land acquisition techniques, fair compensation, urban land policy, and toll road development. These theories are foundations to develop key points for analysing empirical cases. This chapter also provides conceptual framework as analysis guidance of the research. This will presents information about procedures acquiring the land and the process of achieving fair and affordable compensation. Discussion in this chapter aims to obtain practical knowledge of international experiences.

- **Chapter III. Methodology**

This chapter will explain methods used to achieve research objectives. This research will conduct primary survey by interviewing key stakeholders which are affected landowners, land agency's officers, toll road companies, academics, and local government. In addition, secondary data are gathered from literatures, regulations, official website, and visiting related offices. The primary data will be analyzed by using qualitative method to extract key aspects of equity problems, fairness and affordability. Meanwhile, content analysis and comparative method will be conveyed on secondary data to explore land acquisition techniques for public infrastructure especially high economic value infrastructure development.

- **Chapter IV. Land Acquisition Process in Indonesia**

This chapter will explain land acquisition process in Indonesia according to rule of the law and regulations. Then, the process of land acquisition in the development of toll road Depok-Antasari, West Java, Indonesia will be examined. It will mostly cover project description and step of planning process. This will be supported by information regarding local spatial planning in Depok municipality, and condition of the area.

- **Chapter IV. Results and Analysis**

In this chapter, key aspects of equity problem in the case study area are elaborated to show affected landowners' perception and expectation regarding the development. On contrary, internal perspective will describe affordability issues pertaining to land acquisition process in Desari toll road development. In addition, external perspective from expert and NGO is used to provide guidelines to make balance between these perspectives. From this point, criteria for a fair and affordable compensation scheme will be formed.

- **Chapter VI. Policy Implications**

This chapter will conclude the analysis results of the research. It will also provide inhibiting factors which cause delays in Desari toll road development. Then, several criteria for a fair balance compensation scheme are formed by incorporating each perspective. Furthermore, certain policy implications will be proposed to the authorities in charge regarding land acquisition process and to the future research in dealing with fair balance compensation scheme in high economic value infrastructure development.

- **Chapter VII. Conclusion**

This chapter will cover the whole research objectives towards research goal and conclusion of the research.

## Chapter 2 Literature Review

This chapter will delve into some theoretical background in regards to pursue a fair balance compensation of land acquisition for high economic value infrastructure development by exploring land acquisition process conducted in Depok-Antasari toll road development in West Java, Indonesia. First of all, measurements regarding quality and capacity of urban land policy are described in terms of actor, space, and time dimension. This research will put more attention on actor dimension which are equity and efficiency due to difficulties and complexity in achieving balance among them in urban area. Following these notions, several definitions are explained to understand social-economic matters in the development of toll road. Then, two forms of compensation, financial and non-financial scheme, will be discussed to achieve principles of equity and efficiency. This will be formulated in the form of land acquisition techniques.

### 2.1. Urban Land Policy

According to Lichfield (1980), land policy has to be separated from the terms of rural land policies, natural resource policies, economic development, and general taxation. Broadly speaking, land policy is part of human settlement or land use policies, strategies and planning in terms of implementation of the plans. In particular, land policy considers development policy by promoting component of shelter, infrastructure, and services.

The United Nations inter-regional seminar on Urban Land Policies and Land Use Control Measures (1971) embraces those three components in the primary aims of urban land policy which are *“to avoid segregation of the population; to ensure an adequate supply of land for all future urban development needs; to capture for the public, benefits, values, resulting from urban development; to reduce the cost of providing infrastructure and public facilities; to reduce the costs and facilitate the provision of housing and services, especially in developing countries, and to protect the health and safety of the urban population.”* In terms of infrastructure and services, it is suggested that advantages resulting from urban development should be secured for public interests. At the same time, the authorities should manage to lessen investment budget for infrastructure and public facilities development (Willcox, 1980).

Meanwhile, different countries may employ different understanding to urban land policy due to three primary elements of land policy which are *“uniqueness of land; meaning of land; and proprietary rights and obligations in land”* (Lichfield, 1980). Variety of perspectives regarding urban land policy needs guidance to measure the quality and capability of policies issued by public authorities. Doebele (1983) suggests four criteria which have essential role to perform the tasks, namely:

- **Efficiency** which means it endorses land market to obtain the highest and best use of land as resources.
- **Equity** which means it provides the land for private and public interests.
- **Compatibility** which means urban land policy should able to cooperate harmoniously with other policy instruments.
- **Continuity** which means persistent policy of cultural and political system

In terms of infrastructure development, efficiency and equity are very important and sensitive issues since these factors relate to actor dimensions. Several stakeholders involved in



these issues have different interests. Meanwhile, compatibility refers to space dimension which relate to allocation of public infrastructure according to existing regulations and rule of the law. Continuity has close relation with time dimension in which public infrastructure should give its benefit in sustain manner.

Kitay (1985) proposes several directions to achieve the objectives of urban land policy by keeping price reasonable for private and public sectors, assuring that the public recaptures a reasonable part of the surplus of the land resulted by public investment, making land available for essential public purposes at fair price, and guaranteeing equity for all, and protecting the rights of private owners. These notions focus on efficiency and equity issue in urban land policy in order to minimize land problems. In the sense of land acquisition and disposition, further objectives are set including recognizing social justice (equity) by supporting equality among landowners in all planning areas, equality of land costs in similar urban areas, and avoiding economic loss suffered by landowners.

## **2.2. Equity, Fairness and Justice**

According to Lucy (1981), definition of equity which is merely described as having consistent characteristics applicable in every situation for every subject is too abstract to deal with planning problems. Hence, he proposes five conceptions of equity that would be useful to move toward the essence of equity itself. These notions are equality, need, demand, preference, and willingness to pay.

Equality can be implemented to many aspects of public affairs such as equal pay per worker, equal rights to all citizens, and equal services for all residents. In other words, everyone should receive the same service. The concept of need similar to the idea of unequals should be treated unequally. Need can be identified through general categories such as low income, poverty, and minority race. The demand concept refers to the notion that active interest in a service should be rewarded. Related to this concept, preferences can be expressed through demands but all preferences are not expressed through use of a service or through requests or complaints about a service. Lastly, willingness to pay relates to the notion that people who use a service should pay for it whereas nonusers should not pay.

Meanwhile, different notions of fairness are assembled from principle of equality of opportunity in which it refers to the normative regulation of competitions that distribute opportunities in society (Young, 2009). This principle consists of three dimensions of fairness which are procedural fairness, background fairness, and stakes fairness. These dimensions related to existing rule in the competition, a level of playing field for all competitors and what is at stake in the competition respectively. In terms of land acquisition process, procedural fairness would be regulations and rule of the law used to deliver compensation to affected people. Background fairness refers to equal opportunity given to all stakeholders to pursue fair compensation while stake fairness relates to the idea that affected people's grievance should be taken into consideration seriously. These notions will scrutinize existing land policy in dealing with fair balance compensation scheme.

Hay (1995) suggests equity, fairness, and justice can be used interchangeably by looking at a position of contextual-value pluralism. This notion permits that there may be a variety of principles of equity, fairness and justice used independently which are often brought into particular context by devices such as ordering and prioritizing. There are several concepts of equity, fairness, and justice in the disciplines of philosophy, political theory and law, as follows:

- **Procedural fairness**  
It is defined as “the proper adherence to the rules relevant to a procedure and, by extension, as the correct application (and thus the uniform application) of such rules to all cases which are alike within the terms of the rules in a way which is consistent, non-arbitrary and even-handed”. This indicates that the existence of rules whether it is formal or informal, explicit or implicit, is needed consistently implemented to all individuals without considering time and place.
- **Expectation**  
This suggests that decision-making and any deeds by individuals are conducted in regards to reasonable expectations. In this case, any enhancement made deviate from these expectations would be considered unjust or unfair.
- **Formal equality (substantive fairness)**  
This notion requires that “like benefits (or burdens) are enjoyed (or suffered) by like persons”. Indeed, this concept implies that particular rules may lead to disproportionate benefits or burdens hence the rule of law can be criticized.
- **Substantive equality**  
This concept realizes equality of outcomes as criterion of fairness in that it can be beyond the *formal equality* and *procedural fairness* as long as it could provide more equal condition.
- **Equal choice**  
This focus on pre-conditions rather than net outcomes by considering choice sets, constraints, and information fields. Equity is achieved whenever the distribution results from ‘informed individuals choosing over equal choice sets’.
- **Desert**  
This has relation with ‘rewards’ and ‘punishment’ which indicates two circumstances. Firstly, some people might be granted to receive disproportionate benefit due to particular merit whereas others might be asked to pay the penalty of a disproportionate burden.
- **Rights**  
It refers to the condition where individuals receive their entitlements. It can be defined as liberty rights (no violation on personal freedoms) or as claim rights (recognition of rights to health care, education, etc.).
- **Need**  
This can be viewed that certain needs are very much vital; failure to meet these notions would be regarded as injustice. Needs must be justified in terms of the equity of fairness of the end states. In a broad term, the needs can be defined as “anything required if an individual is to participate fully in society or in the normal opportunity range”.

Furthermore, Konow (2003) tries to separate terms of fairness, justice, and equity into two mainstream which are *distributive justice* and *procedural justice*. The first notion refers to fair outcomes while the latter is regarded as fair processes. He also categorizes theory of justice into four distinct elements, as follow:

### 1) **Equality and need**

This category covers theories that incorporate a concern for the well-being of the least well-off members of society including egalitarianism, social contract theories (chiefly Rawls), and Marxism. These theories instigate the Need Principle, which addresses the equal satisfaction of basic needs.

### 2) **Utilitarianism and welfare economics**

This group of theories focus on consequences and end-states such as utilitarianism, Pareto Principles, and the absence of envy concept. Efficiency Principle which advocates maximizing surplus is very much related with these theories.

### 3) **Equity and desert**

This category includes equity theory, desert theory, and Robert Nozick's theory. These theories promote Equity Principle which is based on proportionality and individual responsibility.

### 4) **Context**

This fourth element does not generate distributive principle but rather deals with the dependence of justice evaluation on the context, such as the choice of persons and variables, framing effects, and issues of process.

By knowing these conceptions, affected people and landowner's perspective can be mapped and be classified into such categories. It is obvious that concepts of equity could be perceived differently among community within countries depending on their socio-cultural background, interests, and other personal characteristics. Even though there would be some convergence view on perceiving justice due to political and social climate, evidences show that cultural dimension can influence justice evaluations in some countries (Gaertner & Schwettmann, 2007). This indicates that gathering information from landowners in advance could give considerable advantages to planners and decision makers to know what are the real equity issues appear in the community.

## 2.3. **Affordability and Efficiency**

According to Zhou (2005), efficiency is a normative criterion in welfare economics, which derived from notion of utilitarianism. This notion believes that it is worth to sacrifice the interest of minority for promoting the goodness of majority. That is, efficiency has been used to analyze the way to maximize social welfare. In this category, there are two different principle of efficiency which are Kaldor-Hicks principle and Pareto principle.

A policy can be called Kaldor-Hicks efficient if the gainers could hypothetically compensate the losers and still have some gain left over. It is obvious that this principle is a typical cost-benefit analysis hence it does not take consideration of morality and justice. Meanwhile, Pareto principle can be viewed as "*an allocation is Pareto superior (or Pareto improvement) to its alternative if it makes at least one person better off and nobody worse off...an allocation is Pareto optimal if no further allocation can make at least one person better off and nobody worse off*". In economic analysis of policy, Pareto principle means that there is no individual's utility measure, but there should be unanimity among all of the involved parties.

Kaldor-Hicks principle and Pareto principle are both measuring utility to obtain efficiency. Another principle in getting efficiency is *wealth maximization* principle which deals with social wealth rather than utility. In this case, the increase in a person's wealth indicates the increment of his ability of utility improvement, and the decrease in his wealth reduces his ability of utility improvement. Affordability is close related to Kaldor-Hicks principle of efficiency in terms of private companies still have ability to sustain their capability after paying compensation to affected people. Compensation paid in this respect could be viewed eligible for companies since they only measure cost and benefit facets. On the other hand, wealth maximization principle is in favour of landowners to achieve at least the same condition before eviction. They might want to build the same buildings/houses on the same land value within similar accessibility to market.

## **2.4. Land Acquisition**

Land acquisition is not only a tool for direct control over land development but also a tool used by government to gather adequate land in order to overcome land supply problems for development (Alias & Daud, 2007). Process of land acquisition in different countries may vary depending on their capacity but the main essences are the same. According to FAO (2008), generally well-designed process of land acquisition should consists of planning, publicity, valuation and submission of claims, payment of compensation, possession, appeals, and restitution. It is obvious that compensation scheme is part of the process.

Practically, implementation of land acquisition especially in developing countries is affected by prevailing laws and regulations in their country. Only a few numbers of countries own adequate laws and procedures as well as main institution with competent personnel to be in charge of the regulations (Kitay, 1985). Some countries may endorse compulsory purchase while others focus on voluntary acquisition. Generally, this refers to government intervention to obtain land proactively in several techniques depending legislation and culture in which it can be classified into two different methods, Direct and Indirect methods (Viitanen, Vo, Plimmer, & Wallace, 2010).

Direct land policy may be conducted by public authorities to acquire land for infrastructure development by making an agreement with the landowners and users. In case of failure to achieve this agreement, compulsory acquisition can be employed to obtain land for public infrastructure by delivering compensation to the landowners and occupants. Meanwhile, indirect methods are often supporting direct methods as well as promote and endorse private developments.

### **2.4.1. Direct Methods**

#### ***Compulsory purchase***

Compulsory purchase or land expropriation recently becomes the most technique utilized for land acquisition in the vast majority of countries in the world (Oluwamotemi, 2010; Viitanen, Vo, Plimmer, & Wallace, 2010). “Land expropriation refers to the state compulsory nationalizing land in the collective possession of landowners for public interest” (ADB, 2007). This is done through eminent domain power owned by government through legislation and culture. The legal features of land expropriation are:

*“(I) It is an act of compulsory expropriating collective land ownership and is an extreme special case of property right changes. Government as an entity gets land ownership from the hand of landowners collectively by way of administrative orders where the landowners have no other choices but to yield;*

*“(II) It is conditional on strict regulatory requirements. It must strictly follow legal procedures, be only targeted at the development of public interest and kept away from any commercial purpose and the state should pay fair and reasonable compensation” (ADB, 2007).*

Nevertheless, process of obtaining land for public interest by using expropriation technique constitutes government ability to perform with carefulness (Belej & Walacik, 2008). Even though expropriation would deliver generous, fair and efficient compensation, it still exercises considerably sacrifice from the affected people especially large-scale projects. The affected people would perceive grievance both physically and mentally.

### ***Voluntary Agreements or Bargain Sale***

In an ideal condition, the vast majority land acquisition techniques should be based on an agreement among parties on a voluntary basis (Kitay, 1985). This technique refers to a mechanism on which the landowners make an agreement with the government to bestow their property for public infrastructure, an act of informed consent conducted with sufficient knowledge of several choices and their impacts, with or without compensation (World Bank, 2010). Actually, the process of voluntary purchase is almost the same with compulsory acquisition. The differences of both techniques can be seen from the actors involved and how the process occurs. In voluntary basis, the landowners and users make an agreement while compulsory purchase does not require it. The only actor has the power in the process of compulsory purchase is government or public authorities while voluntary agreement can be conducted by private parties (Viitanen, Vo, Plimmer, & Wallace, 2010).

### **2.4.2. Indirect Methods**

#### ***Building Prohibition and Subdivision Prohibition or Subdivision Permission***

In some regions, the land may be prohibited for sale, construction, major alteration or for subdivision of the land that causes added value on the land in the area to be developed. This prevention is to hinder unwanted buildings or other kinds of land use which the authorities find inappropriate in the region. Planning permission is allowed if the portion of the land is given to the government to be used for specific developmental activities.

#### ***Pre-emption***

*"The pre-emption is a typical latent right, which lays silently on a property. Only when the present owner (or right holder) decides that he is interested in selling the property dies the right wake up"* (Zevenbergen, Frank, & Stubkjær, 2007). The pre-emption is the right that the land owners offer to the state or local government, to buy their property first as the market value rather than to other parties. Pre-emption right is exercised based on the intention of the owner's to sell the land or not. If they do not intend to sell the land, expropriation is done as a last alternative to acquire the land for development.

#### ***Financial Incentives***

Financial incentives are the facilities given by the government to the landowners that include subsidies to encourage specific developments at a certain location and time. These may include low prices, minimize or halt property tax, low costs development loans, and many other strategies. This is provided to the land owners whose land is acquired by the state for public or private purpose. The land related to these rights and prohibitions are sparsely distributed. Therefore, this cannot be used independently for large-scale infrastructure development such as roads which has certain alignment. However, this technique will give significant assistance to direct acquisition.

#### ***Land Banking***

"Land banking is the structural acquisition and temporary management of land in rural areas by an impartial State agency, with the purpose to redistribute and/or lease out this land with a view to improve the agricultural structure and/or to re-locate the land for other purposes with a general public interest" (Damen, 2004). Land banking serves multipurpose spatial planning specially in rural areas. The main concept of the land bank is to acquire and/or purchase the vacant land and

the land which are underutilized with the future goal of productive reuse of the land (GLEFC, 2005).

Furthermore, it was found through their survey that land banks were established for housing, redevelopment and industrial/commercial purpose which were proved to be true also through their literature review. The top three reasons for land banking were (i) to reverse urban blight, (ii) successful reuse of land and (iii) increase stability of both property and value where monitoring of the land on the banks can be done through a central database or monitored through geographic information system (GLEFC, 2005).

**Land Lease**

According to Slangen and Polman (2008), land lease can be viewed as “*Land lease is a process of voluntary transaction of land in which property rights such as use and income rights are transformed from land owners to tenant*”. It needs much coordination and motivation mechanism. The set of agreements that are made between the parties could be explicit or implicit and the relationship between tenant and landowner is often more important than in a market transaction. Leasing land is a two sided mechanism where the rights on the land are transferred from one party to another.

Moreover, the bundle of rights transferred varies according to the arrangement made during contract and the rights and obligation of both the parties are finalized before the commencement of the contracts. Therefore, it is reasonable to have clear and transparent guidelines to comply with the transaction. It is often expensive and inefficient to get any area or land using conventional processes like buying land, compulsory purchase or expropriation, which meet fierce resistance (Larsson, 1997). The land lease method may be feasible provided that proper laws, clear directions and strong local authority are in place.

**Benefit-share**

One of the most known cooperation between public and private parties to share profits and risks is public-private partnership (PPP). This emerging collaboration allows public authorities to carry workloads with their private partners in order to boost better outcomes (Levainen & Altes, 2002). In the land acquisition activities, the public authority can form a partnership with some private authority for investment and also for the other further developing processes. For instances, state can make partnership with large land holders to invest in the infrastructure like schools and hospitals and acknowledge them by introducing those organization by their name.

Levainen and Altes (2002) develop four-dimensional model to summarize alternative collaboration between public and private parties. This model is based on experience of public-private cooperation in Finland and the Netherlands.

Table 2.1 Four-dimensional model of PPP

Dimension	Category
Type of land	<i>Raw land</i>
	<i>Unbuilt sites</i>
	<i>Renewal</i>
Owner of land	<i>Municipality</i>
	<i>Constructor</i>
	<i>Housing developer</i>
	<i>Other</i>

	<i>Mixture</i>
Model of co-operation	<i>Traditional</i>
	<i>Exchange for building rights</i>
	<i>Integral</i>
	<i>Joint</i>
	<i>Concession</i>
Type of contract	<i>Framework</i>
	<i>Pre-agreement</i>
	<i>Site disposal</i>
	<i>Infrastructure construction</i>

## 2.5. Compensation

### 2.5.1. Financial Compensation

Traditionally, compensation for affected people due to land acquisition would be delivered in the form of money. This will bring into two approaches in valuing parcel of land which are fairness-based justifications and efficiency-based justifications (Bell & Parchomovsky, 2007). The first notion implies that the fair compensation requirement represents the legal regime that the citizenry would have chosen behind a veil of ignorance. The latter notion holds as a premise that governmental decisions to take property cannot be held ex ante to efficient. Furthermore, Bell & Parchomovsky (2007) mention related notions in terms of efficiency-based justifications which are fiscal illusion, moral hazard, and interest group payoffs.

It is argued that condemning land for public use creates winners and losers (Niemann & Shapiro, 2008). A large number of people, those whose property is not condemned, benefit at the expense of a much smaller minority who must surrender their property. Even when compensation is equal to the pre-taking value of property, as it is most commonly, the owners of condemned property lose relative to those escaping condemnation. Niemann & Shapiro (2008) propose criteria for judging whether or not a compensation rule is efficient and/or equitable:

- a) A compensation rule is efficient, if the resulting amount of land taken and the amount of investment on the land are such that it is impossible, by adjustments in either the amount of land taken and/or the amount of investment on the land, to increase the net output (output of both private and public goods less costs) in the community. This notion similar to Kaldor-Hicks principle thus private companies try to balance their investment on land with the amount land taken for development. In this case, this criterion also has close relation with Efficiency principle.
- b) A compensation rule is equitable:
  - a. Ex post if the post-taking income for those whose land is taken and those whose land is not taken is equal. In regards to Konow (2003) categorization, this notion has relation with equity and desert group. Those whose land is taken should afford to compensate their losses proportionally. This term puts more attention on fair outcomes (distributive justice)
  - b. Ex ante if all landowners, regardless of whether their land is taken or not have the same expected income. Procedural justice has strong influence in this notion in which all members of community have the same equal treatment according to rule of the law. This notion can also be categorized in the group of equality and need.

Even though either fairness-based or efficiency-based justifications constitute full recompense for the taken property at its value to the original owner, there are several types of value excluded from compensation under market value which are subjective value, goodwill, and “takings blight” (Bell & Parchomovsky, 2007).

## **2.5.2. Non-Financial Compensation**

### ***Land Readjustment (LR)***

Land readjustment is a tool to alter structure of peripheries and public utilities within selected area without changing the ownership of land (Larsson, 1997). Hence, the landowners are still having the land and it is often implemented through private agreements and land swap. For larger area involved many landowners, the agreement has to be promoted within a ratified mechanism. The selected area is usually occupied by the landowners with small parcels of land within scattered and irregular area. The landowner of selected area should contribute their land to provide space for roads, parks, and other public spaces. Besides that, part of the land may be sold to finance the costs of planning, administration and construction.

### ***Right Conversion Method (RCM)***

This method is intended to conduct urban redevelopment, especially in growing region with relatively high density (Harun, 2010). Similar to land readjustment, RCM does not require land acquisition and the landowners do not have to move away. Actually, principles of RCM are very much close to LR. Each parcel of land is “shifted” not “evicted” to a new location with preconditions such as regular landform, little bit smaller land size for reserved land. The difference can be seen in the way land is swapped. In LR, the one swapped during the process of readjustment is land itself whereas RCM only exchanges the rights of land and/or buildings. Besides that, RCM tends to pursue vertical development in which landowners may not have their rights on land individually instead they only have certificate for shared ownership over the land and space located in the new flat. Certain floors in the building can be rented for offices and other beneficial purposes. Profit from this mechanism can be enjoyed by the landowners.

### ***Transferable Development Rights (TDR)***

Recently, market-oriented planning instruments have received considerable attention in many countries. There is possibility to develop innovative, more market-oriented instruments in any countries. Land policy instrument such as Transferable Development Rights (TDR) can be an inspiration for the tailor-made translation of instruments in other planning systems. The idea of transferring development opportunities between areas is more than only the transfer development rights but actually it relates to compensation, in terms of non-financial perspective.

The essential purpose of TDR is to recapture a portion of the extra value generated by increased development potential and to use it as compensation for the reduction of development potential elsewhere. The mechanism of TDR concept can be explained as follow (Janssen-Jansen, Spaans, & Veen, 2008):

- Landowner A (in a so-called sending area) is not allowed by the government to use his land in a particular way which will yield an economic profit
- Government compensate A for his restriction because A will most likely suffer a financial loss as a result of it.
- Non-financial compensation is given in the form of a development right.



- This right is transferable and which can be bought by a third party owning land in a receiving area, who without that right cannot realize the desired land use
- Landowner A in a sending area sells his right to landowner B in a receiving area, who can then use it to develop his land more intensively than before.

### ***Special-Purpose Development Corporation (SPDC)***

Another mechanism for non-financial compensation is by promoting security bond or shareholder for landowners. The circumstances of takings in the course of land assembly for economic development may bring inefficient compensation forms. Some landowners put an exceptionally high emotional value on their land, for which they are not compensated, while others expect a price that reflects not only the land's market value but also the harm caused to their sense of autonomy. Moreover, it is exceedingly difficult to distinguish a landowner's opportunistic holdout behaviour, against which policy measures may be justified, from legitimate bargaining. On the other hand, circumstances those opportunistic private developers may obtain considerable profit due to the below-market compensation to current landowners.

Lehavi & Licht (2007) propose that a public authority exercising its eminent domain powers for an economic development or redevelopment project incorporate a Special-Purpose Development Corporation (SPDC) for that project. This corporation may be set up as a subsidiary of the municipality's regular development corporation, to which the municipality will have devolved its eminent domain powers. The mechanism of SPDC can be explained as follow:

- The municipality or its designated representative would exercise the city's eminent domain power to take the private properties and then grant certain rights in the land such as lease rights.
- Landowners whose land has been condemned would have their choice of two forms of compensation: (1) just compensation under current law, it could be based on the pre-project fair market value; or (2) securities in the SPDC in proportion to the landowner's contributions.
- From a financial point of view, the second choice would be equivalent of the legal just compensation amount just compensation amount, while at the same time granting the landowner the sum needed to cover the purchase cost (known as the "strike price").
- SPDC either auctioning its land rights or else negotiating these land rights with the private developer who initiated the project. The possibility of bidding war among several private developers would only benefit the SPDC and its shareholders.
- SPDC would distribute the net proceeds from the sale as dividends to its shareholders.

## **2.6. Theoretical Framework**

This research will be conducted based on theories in this chapter by following the logic described in theoretical framework. The community would be people surrounding the case study area, especially those who representative of affected landowners due to infrastructure development project. Fairness criterion will be taken from local people's characteristics, expectation, and preferences (context-based) while affordable measures are assembled from private companies' perspective in regards to the notion of efficiency.

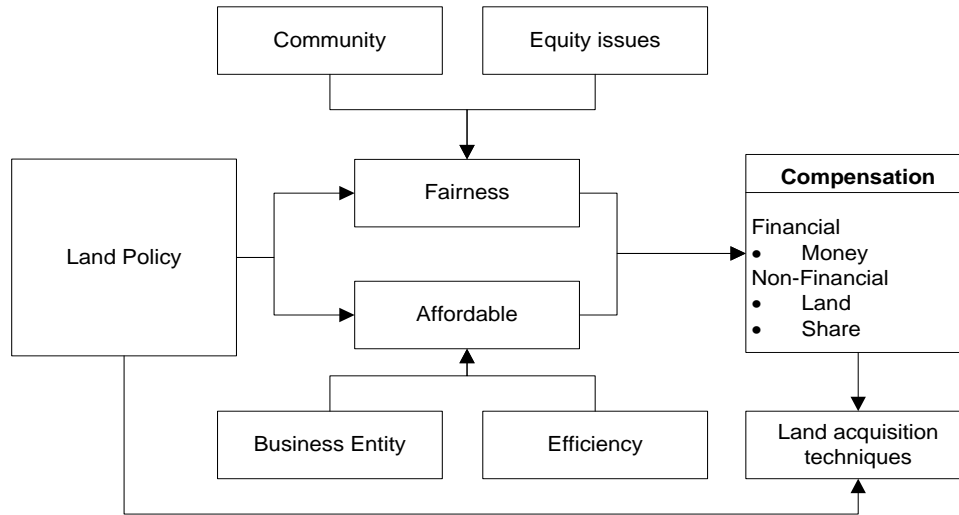


Figure 2.1 Theoretical Framework

The essence in this framework will be formulating certain forms of compensation that would make well-balanced trade-off between the notion of fairness, equity, and justice and the notion of affordability and efficiency. This would be done through financial and non-financial compensation schemes. The research will explore the possibility of non-financial compensation mechanism through certain land acquisition techniques could have more close proximity to equity and efficiency conceptions for high economic value infrastructure development. All too often, financial compensation mechanism might be the only way offered during land acquisition process. This circumstance could deliver equity issues due to different understanding in valuing land and building prices. Non-financial compensation as an alternative to provide equal choice for affected landowners to make contribution for infrastructure development.

## Chapter 3 Methodology

This chapter will explore methodology used to gather data regarding equity and efficiency issues. Equity, fairness, and justice conception will be taken from landowners' perspective due to high economic infrastructure development whereas efficiency and affordability conception will be looked at government and business entity. Besides that, different perspectives concerning to equity and efficiency will also be acquired from academics and NGO. Meanwhile, implementation of regulation pertaining to land acquisition for development of public interest will be examined from policy perspective in terms of how multilevel government efforts to achieve more fair and eligible process.

### 3.1. Research Site

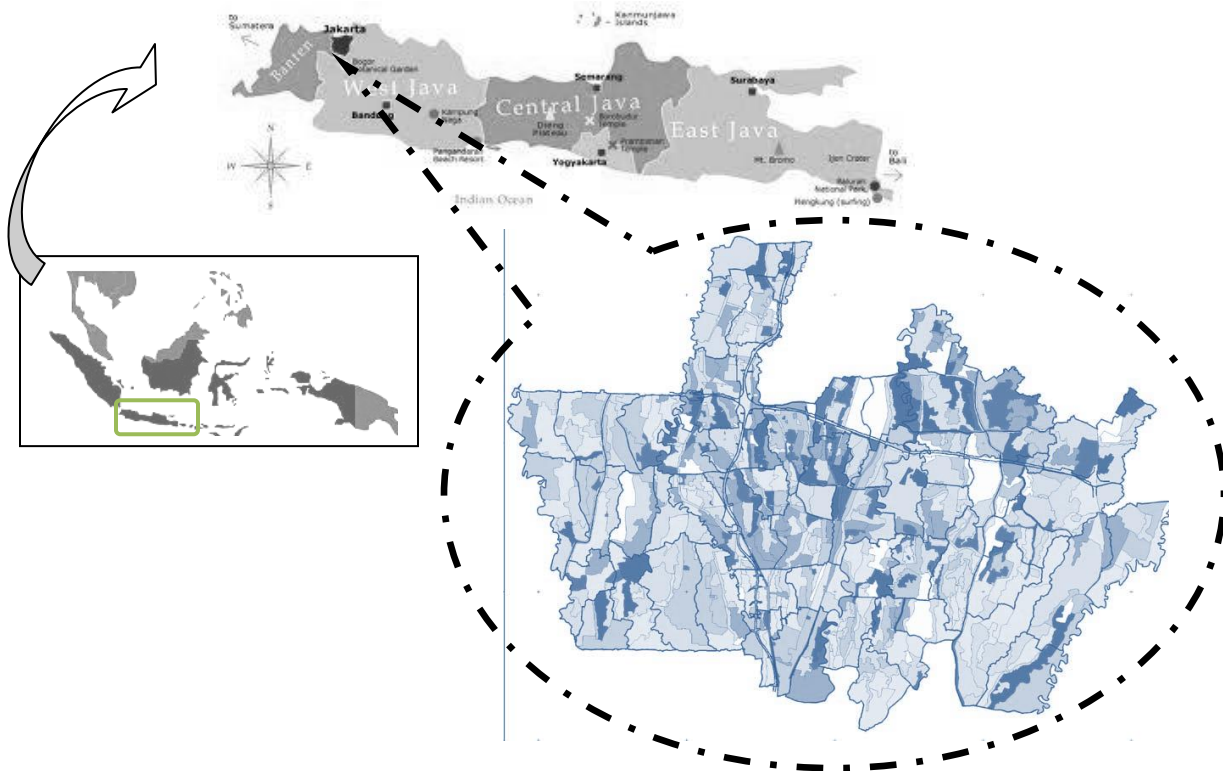


Figure 3.1 Depok Municipality

This research will be held in urban areas adjacent to the capital city of Indonesia which is Depok Municipality. This municipal resides on southern of Jakarta, precisely between Province of Jakarta and Bogor Regency. In 1982, its population reached 240,000 people while more than about two decades its population increases significantly to 1.2 million people. This circumstance endorse many development in the municipality in which it is not only supporting local inhabitants but also maintaining the impact of development in Jakarta. At the initial period, this municipality only has 3 sub-districts but recently it grows into 11 sub-districts which are Beji, Pancoran Mas, Cipayung, Sukmajaya, Cilodong, Limo, Cinere, Cimanggis, Tapos, Sawangan, and Bojongsari. This indicates that development in the area is very fast and massive.

The existence of toll road development in the area is aimed to support local inhabitant's livelihood in which many people living in Depok are working in Jakarta. Hence, the needs for public infrastructure in the area are very urgent since congestion rate in Depok municipality starts to rise. However, this municipality has been developed rapidly thus in some parts of the region are very dense. Unfortunately, some parcels of land in the region are passed by several toll road development projects. Due to this circumstance, toll road developments in this region face serious problem in conducting land acquisition process. Depok-Antasari toll road development spreading from Depok Municipality to part of Jakarta is one of the projects experience this issue.

In Depok Municipality particularly, this toll road development spanned within 4 sub-districts which are Pancoran Mas, Cipayung, Limo, and Cinere. This 21.54 km road would pass 8 'Kelurahan' (villages) namely Pangkalan Jati, Gandul, Krukut, Grogol, Rangkapan Jaya, Rangkapan Jaya Baru, Cipayung, and Cipayung Jaya. Even though concession agreement between government and Business Entity has been signed on 29 May 2006, there is no significant progress of this infrastructure development. Of the eight *Kelurahan*, only 3 *Kelurahan* have started entering land acquisition mechanism which are Pangkalan Jati, Gandul, and Krukut. In this case, the research will focus only in these *Kelurahan*.

### 3.2. Research Strategy

This research will use several major strategies to obtain fruitful result. First of all, literature review could give preliminary understanding to the issues being examined. This could be gathered from articles, journal, regulations, documents, websites and other sources. From this point, researcher can learn from and build on previous findings (Neuman, 2006). Subsequently, experts' opinions as well NGOs overviews regarding equity and efficiency issues in land acquisition mechanism in Indonesia are explored through interview and discussion. This step will offer wider perspective in conducting research by combining local issues and preliminary knowledge from the first step.

Finally, policy in land acquisition for development of public interest will be described especially in addressing and anticipating issues which would occur during land acquisition process. This policy guided top-down approach can be described within four-staged governance activities in actor behavior on different levels of governance (Loorbach & Rotmans, 2010). At the *strategic* level, activities are aimed to structure complex societal problems and design alternative options for long-term manner. At the subsystem level, *tactical* activities are aimed to foster system structures such as institutions, regulations or financial infrastructures. *Operational* level is intended to technical activities in regards to systematic changes in the short run. Lastly, evaluation and monitoring should be conducted to evaluate each level and their relationship during *reflexive* activities.

Table 3.1 Research Strategies toward Governance Activities

Level	Possible activities
Strategic	Explore principles applied in managing land acquisition mechanism to gain more fair and eligible compensation forms.
Tactical	Explore regulations and rule of the law provided to pursue equitable land acquisition process
Operational	Evaluate policy plan in regards to rule of the law and regulations,

	analyze possible policy discretion in the process
Reflexive	Measure compatibility of each level with higher level

### 3.3. Data Collection

In operational level, field research will be conducted to gain preferences and characteristics of case study area as well as actors involved in the development. This research will be obtained through interview with related stakeholders by using qualitative method. Interview is conducted to obtain equity and efficiency problems which might occur in land acquisition process that would give useful information to consider eligible compensation scheme.

Primary data will be gathered by observation and interviewing key stakeholders which are affected landowners, multilevel government, Land Acquisition Committee (P2T), Land Procurement Team (TPT), business entities, NGOs and academics. Interview is conducted by using open-ended question, non-directive, and semi-structured interviewing method. Even though expected questions are prepared for the interviews, during field research the questions and the order in which they are asked are tailored to specific actors and conditions. It is expected that departure from the questions, many in-depth information would be harnessed while interviewing respondents (Neuman, 2006).

Meanwhile, secondary sources can be gathered from literatures, the internet, and visiting relevant institutional stakeholders. Content analysis will be conducted to explore trend and practice of land acquisition techniques. Narrative and coding analysis are used to obtain criteria for a fair and affordable compensation scheme.

Table 3.2 Data resources

Objectives	Required Data	Data / Information Sources	How to obtain the data	How to analyse the data
To identify equity problems in regards to high economic value infrastructure development	<ul style="list-style-type: none"> <li>▪ Map of study area and its spatial data</li> <li>▪ Population data including characteristic of people</li> <li>▪ Stakeholders' perception on compensation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Scientific literatures, Journal article, Reports</li> <li>▪ Municipal Land Agency</li> <li>▪ Bureau of Statistic</li> <li>▪ Affected People of Depok-Antasari toll road development</li> </ul>	<ul style="list-style-type: none"> <li>▪ Study literatures</li> <li>▪ Official Website</li> <li>▪ Interviews</li> </ul>	<ul style="list-style-type: none"> <li>▪ Content Analysis</li> <li>▪ Qualitative method</li> </ul>
To identify land acquisition techniques in high economic value infrastructure development	<ul style="list-style-type: none"> <li>▪ Trend and practice of land acquisition techniques</li> </ul>	<ul style="list-style-type: none"> <li>▪ Scientific literatures, Journal article, Reports</li> </ul>	<ul style="list-style-type: none"> <li>▪ Study literatures</li> </ul>	<ul style="list-style-type: none"> <li>▪ Content Analysis</li> </ul>
To assess criteria for fair compensation scheme which is more acceptable for all stakeholders	<ul style="list-style-type: none"> <li>▪ Criteria of fairness and affordable</li> </ul>	<ul style="list-style-type: none"> <li>▪ Scientific literatures, Journal article, Reports</li> <li>▪ Academics</li> <li>▪ Business entities</li> <li>▪ Local government</li> <li>▪ P2T</li> <li>▪ TPT</li> </ul>	<ul style="list-style-type: none"> <li>▪ Study literatures</li> <li>▪ Interviews</li> </ul>	<ul style="list-style-type: none"> <li>▪ Narrative analysis</li> <li>▪ Coding Analysis</li> <li>▪ Qualitative method</li> </ul>
To formulate policy	<ul style="list-style-type: none"> <li>▪ Regulations related</li> </ul>	<ul style="list-style-type: none"> <li>▪ Scientific literatures,</li> </ul>	<ul style="list-style-type: none"> <li>▪ Study</li> </ul>	<ul style="list-style-type: none"> <li>▪ Content</li> </ul>

implications for land acquisition in dealing with high economic value infrastructure development	to land acquisition techniques and compensation	Journal article, Reports <ul style="list-style-type: none"> <li>▪ National Land Agency</li> <li>▪ Toll Roads Authority (BPJT)</li> <li>▪ Local government</li> <li>▪ Ministry of Finance</li> <li>▪ Ministry of Internal Affairs</li> </ul>	literatures <ul style="list-style-type: none"> <li>▪ Official website</li> </ul>	Analysis
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### 3.4. Data Analysis

In the field, interview data will be gathered through recording on a recorder or a note. A note is the primary tool to save conversation during interviews with the respondents while in many cases a recorder is sometimes unwanted by them. Method used in the analysis of data is narrative analysis and coding analysis. A narrative refers to the condition of social life, as explained by Neuman (2006):

*“Narrative are how people organize their everyday practices and subjective understandings, and they appear in oral or written texts to express the understandings”.*

Meanwhile, coding analysis consists of two simultaneous activities which are mechanical data reduction and analytic categorization of data. After collecting the data, several steps will be executed to obtain specific data needed to answer research objectives, which are:

- **Make transcript of conversation**  
Interview data in the form of sound recordings or notes are digitized manually into sentences with narrative form. These texts are then saved into Microsoft Word format before they are converted into PDF format.
- **Conduct coding analysis**  
This part is conducted through three stages of coding (Neuman, 2006). Firstly, researcher condenses the data into preliminary analytic categories or codes, so called *Open Coding*. In this stage, data are still independent and unorganized in which there is no correlation among them. Secondly, researcher organizes the codes, links them, and discovers key analytic categories. This stage is called *Axial Coding* which means all data have been connected and dependent on each other. Lastly, *Selective Coding* is conducted to filter the data required in accordance with the needs of research.
- **Finalization**  
After having well-structured data, there will be three main categorization of qualitative data for the research which are external perspectives, internal perspectives, and landowners’ preferences.

### 3.5. Research Steps

This research will be conducted in several steps to answer research objectives, which are:

- **Literature review and methodology**  
This first step explores the literatures regarding urban land policy to explain important factors which can be harnessed to evaluate common and recent land acquisition techniques. Trend and practices of land acquisition techniques in the world are also scrutinized to yield an overview of strengths and weaknesses of each technique.

- Describing the case study area  
 The case study analysis is taken to inspect affected people's perception of public infrastructure development. In this case, the study will be conducted in Depok Municipality due to its position adjacent to the capital city of Indonesia, Jakarta. Hence, this urban area needs to build adequate transportation system to support local inhabitants and commuters. This certainly has relation with financial capability to perform the task.
- Conduct primary survey  
 Interviews will be provided to obtain adequate information from affected people, experts, and authority officers (*see Appendix 3 List of Interviewees*). Primary data are gathered by using qualitative method to find equity problems perceived by the stakeholders. Representatives of affected landowner in each *Kelurahan* are interviewed; in particular community-based organization would be the main sources. In addition, characteristics and expectations of each stakeholder are also being collected to enhance stakeholders' perception in regards to equity problems.
- Conduct data analysis  
 Qualitative data analysis is conducted to extract any equity problems that would occur during land acquisition process. Factors that would generate equity problems in the case study area are identified by using coding analysis.
- Conclusions and Recommendations  
 Propose compensation mechanism in land acquisition for public interest in four-staged governance activities that could be used to avoid unexpected equity problems while maintaining the ability of government to provide infrastructure development. Recommendations regarding policy implications will be delivered to public authorities as well as private parties to encourage the compensation mechanism implemented in proposed land acquisition techniques by taking into account local characteristics and expectations of the area.

## **Chapter 4 Land Acquisition Process in Indonesia**

This chapter will explore land acquisition process in Indonesia, especially in the procurement of toll road. Regulatory changes in terms of land acquisition occurred in order to resolve land problems and accelerate economic development, although it cannot necessarily be applied in ongoing infrastructure development. Depart from this; several stages of land acquisition process will be described in accordance to prevailing regulations. Meanwhile, mechanisms on procurement of toll road development will show the role of multilevel government and private parties. To see it more clearly, land acquisition process in Depok-Antasari toll road development will be examined.

### **4.1. Regulations on Land Acquisition**

Actually, at the beginning of year 2012 new act regarding land acquisition in Indonesia has been issued to accommodate MP3EI (Master plan for acceleration and expansion of Indonesia's economic development). This regulation so called Act No. 2/2012 about Land Acquisition for Development of Public Interest is intended to foster infrastructure development to achieve equitable and prosperous society by considering the principle of humanity, democratic and fairness. The act is then followed by implementing regulation issued at the second semester of 2012. However, according to the act, any infrastructure developments which are still in progress should continue to use previous regulations until late December 2014.

Presidential Decree No. 36/2005 and Presidential Decree No. 65/2006 intended to amend the previous decree are two regulations which are applied to conduct land acquisition for public interests in several ongoing infrastructure developments. Apart from those regulations, there is implementing regulation for operational level issued by BPN (National Land Agency) which is Decree No. 3/2007. This regulation provides mechanism and procedure in the field to conduct land acquisition of infrastructure development for public interest.

### **4.2. Stages of the Process**

Based on the implementing regulation, land acquisition process is divided into three main stages namely planning, determination of the location, and implementation. These steps are conducted to obtain land for several public interests which are defined in Presidential Decree No. 65/2006, namely:

- Roads, toll roads, railways, water supply, drainage and sanitation;
- Reservoirs, dams, irrigation dams, and other waterworks building;
- Ports, airports, railway stations, and terminals;
- Public safety facilities such as dikes for flood, lava and other disasters;
- Landfills;
- Nature reserves and cultural heritage;
- Generators, transmission, and distribution of electricity

#### **4.2.1. Planning**

Planning proposal is needed to be prepared by any government agencies that need land for building infrastructure for public interest. This proposal should be issued one year at the latest before conducting land acquisition process by elaborating goals and objectives of the development, layout and location, area of land required, and sources of funding. In addition, they



also have to provide documents regarding environmental feasibility analysis of development plan including impact prevention and control efforts.

Government agencies in this regulation are related to the state agency; department which refers to ministerial agency, non-department government agency, provincial government, and municipalities. In this regards, government agencies could ask for consideration to BPN in making the proposal of development plan. Meanwhile, planning proposal is not needed for conducting development for public interest in case of urgent circumstances such as providing facilities for public safety and disaster management.

#### **4.2.2. Determination of Site**

Based on planning proposal, government agency needs to request formal letter to acknowledge that the site is determined for the development plan. This formal letter is provided by Mayor of municipality or Governor in case of Jakarta. In order to issue such letter, Mayor or Governor is then conducting assessment of compliance for several important factors namely zoning, landuse management, socio-economic, and environment as well as control, ownership, and use of land. The assessment of compliance is formulated by the Mayor or Governor in accordance to recommendation from related government agencies and municipal land agency. Mayor or Governor could suggest government agency that needs land to choose other development site if the recommendation is not conform to existing spatial plans.

Pronouncement of site determination issued by either Mayor or Governor may act as a permit to conduct land acquisition for any government agency that needs land. After receiving the pronouncement, government agency that needs land should inform to society the development plan by directly meeting with affected landowners and indirectly using newspapers, television or other media. Since the site is determined, any purchase on land must have written approval from Mayor or Governor.

#### **4.2.3. Implementation**

Land acquisition for infrastructure development of public interest implies the formation of Land Acquisition Committee (P2T) to execute the development plan on the determined site. This committee is formed from several authorized officials from different government agencies and units which are Regional Secretary as chairman, officials of local municipality as vice chairman, head of municipal land agency or appointed officer as secretary, and head of government agencies or appointed officer related to land acquisition process as members.

During land acquisition process, P2T is the main actor in executing development plan and has following roles:

- Provide explanation and counseling to society
- Conduct investigation and make inventory of parcels of land, buildings, plants and other substances related to land that would be handed over or released
- Conduct investigation on legal status of land that would be handed over or released as well as its supported documents
- Publish the result of investigation and inventory making
- Receive the result of valuation of land, buildings, plants and other substances related to land from Land Appraisal Team and officials who responsible on making valuation of buildings, plants and other substances related to land
- Conduct deliberation with affected landowners and government agency that needs the land in regards to establish form and amount of compensation
- Establish amount of compensation for any land that would be handed over or released

- Observe process of compensation delivery to affected landowners
- Make official documents regarding transfer of rights on land
- Administer and document all files regarding land acquisition process and hand over the files to government agency that needs land as well as municipal land agency
- Inform problems and considerations to make solution to Mayor or Governor if deliberation process could not make an agreement.

P2T could be formed in higher level of government such as provincial level and national level depending on coverage area of land that would be handed over or released. In this case, P2T in municipal level is still the main role in conducting land acquisition process within their region whereas P2T in higher level may act as coordinator and makes P2T in each municipal level can perform the process harmoniously. Authorized land agency in each level of government is representative of central government. Each authorized land agency has responsibility to perform land acquisition process within their jurisdiction boundary.

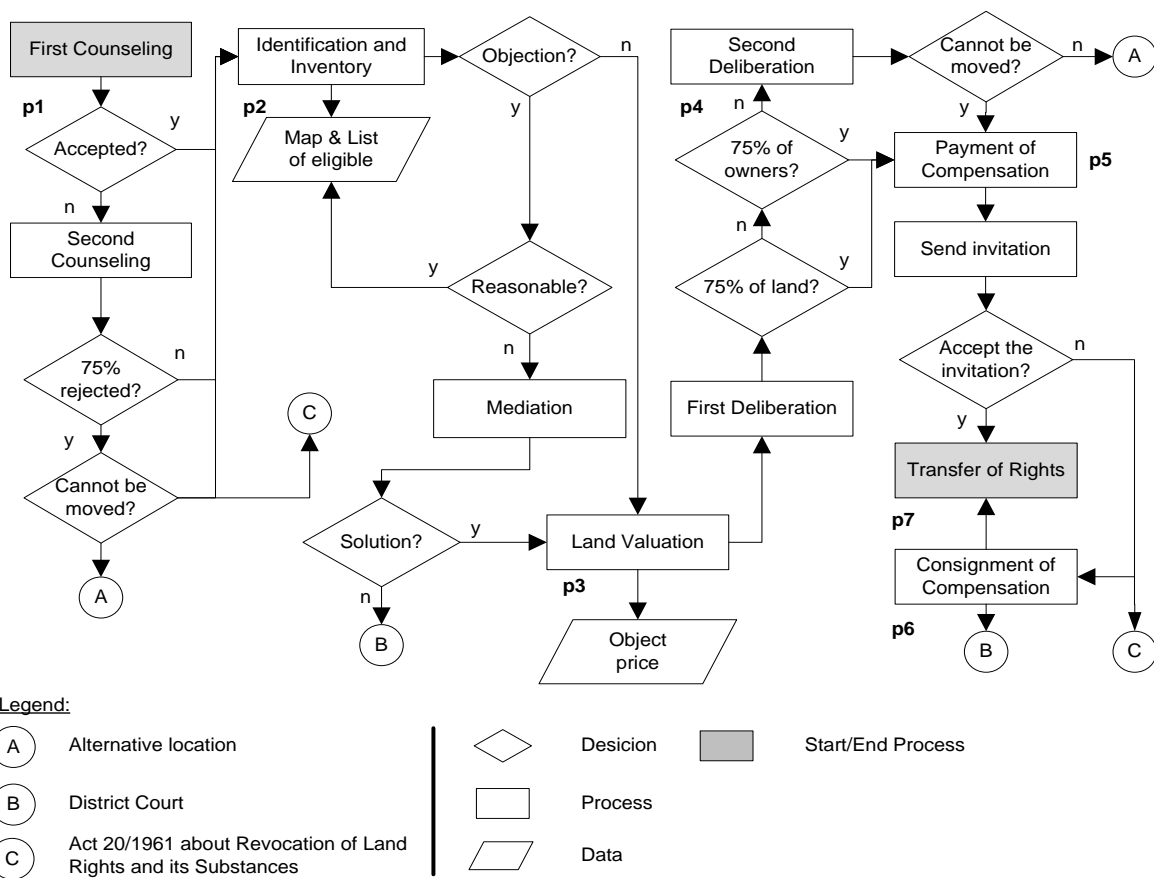


Figure 4.1 Implementation Stage of Land Acquisition

According to the role of P2T, there are several steps in conducting land acquisition for infrastructure development of public interest. Each step should be respected by the committee before they could continue to the next step since the results of previous step become the determinant on how the following steps may succeed, as follow:

### ***Counseling***

P2T and government agency that needs land conduct a counseling to explain about benefit, goals, and objectives of the development plan to society in order to gain willingness of affected landowners (see *Figure 4.1, p1*). In case of disapproval, P2T could hold another counseling to elucidate more information regarding the development plan to convince the landowners.

After the last counseling, there would be two conditions appear. Firstly, if majority of affected landowners (75% or more) are still rejecting the development plan in their land then government agency that needs land should propose alternative location. Secondly, if the determined site cannot be moved to another location then P2T could make suggestion to Mayor or Governor to execute Act No. 20/1961 about Revocation of Land Rights and its Substances. The determined site may not be relocated to other alternative location due to technical matter in regards to spatial plans issues such as:

- Based on historical, climatologic, geographic, geology and topographic aspects;
- Relocation of determined site would yield huge sacrifice, disadvantages, and expenses;
- The development plan is very important and the site is the best location compared to other alternative options or even there is no other option;
- Development in the location is needed to avoid disaster that would threaten wider public security and safety.

### ***Identification and Inventory***

Counseling organized by P2T and government agency may yield two possible results which are affected landowners accept the development plan and disagreement on the plan. In case of acceptance, P2T is then conducting identification and inventory of land in the determined site by operating following activities (see *Figure 4.1, p2*):

- Designation of boundaries
- Measurement of land and buildings
- Plotting of land and buildings as well as its border areas
- Determination of land and buildings' boundaries
- Making inventory data in regards to landuse; land and buildings' status; tenure and ownership of land, buildings, and plants
- Making inventory of authentic proof of ownership on land, buildings and plants

The results of this step are map of land parcels and list of eligible parties which includes names of holder of land rights; land status and its supporting documents; land size, owners or occupiers of land, buildings, plants and other substances; landuse and land utilization. These products are then published in public media such as newspapers for twice publication and/or the internet for duration of 7 days to provide sufficient time to receive any objection.

P2T has authority to investigate and judge objections from affected people and conduct possible action to find solution. In case of unacceptable reason, P2T keeps continue to conduct land acquisition process. Possible solution can be obtained through deliberation in terms of mediating dispute or conflict over land ownership. Judicial institution would be the last resort to facilitate conflicts over land whenever solution cannot be met through deliberation.

### ***Land valuation***

Mayor or Governor assigns Land Appraisal Team to work with P2T in regards to make land valuation. Appraisal institution should have license from BPN to practice assessment of land price in assigned jurisdiction area. Unfortunately, it is sometimes municipal government or

provincial government does not have any licensed appraisal institution. In this case, Mayor or Governor could form Land Appraisal Team whose elements derived from:

- Government agencies which have responsibility and in charge in the field of buildings and plants
- Central government institution which in charge on national land administration
- Government agencies which have responsibility and in charge in managing land and building taxes
- Experts or experienced person as land appraiser
- Academics who have capability to make valuation of land, buildings, plants and other substances related to land
- Non-governmental organization (optional)

Land Appraisal Team assesses the land price based on NJOP (selling value of tax object) or the real value with respect to NJOP of the current year and could be guided by several variables such as location and the layout of the land, land status, landuse, conformity between the use of land with Spatial Plans prevailing in the municipality, availability of facilities and infrastructure, and other factors that affect the price of land.

Appraisal on buildings, plants and other substances related to land is done by government agency in the municipality who responsible in this field with respect to standard of price specified by rule of the law. The results of appraisal will be delivered to P2T and used as a foundation for erecting deliberation between government agency that needs land and affected people (*see Figure 4.1, p3*).

### ***Deliberation***

P2T will hold deliberation by inviting government agency that needs land and affected people to discuss on the issue of the development plan for public interest in determined site as well as form and amount of compensation. In terms of form and amount of compensation, the discussion will refer to agreement of all parties, results of appraisal, and dateline of the development project. In terms of land, buildings, plants and other substances related to land, the discussion will also focus on three issues which are:

- If it is a disputed object in the court then deliberation is conducted among conflicting parties.
- If it is a collective right then deliberation is conducted for all rights holders.
- If it is an endowment property then deliberation is conducted with parties as set by regulations about endowments.

The deliberation is considered to reach an agreement if it can fulfil at least one of two conditions. The first condition is at least 75% of required land for the development can be handed over or released. The second condition is 75% of affected people agree on form and amount of compensation. In this case, agreement should be achieved through deliberation or government agency that needs land should find other alternative location for the development. However, it will not be applicable if the determined site may not be relocated due to technical matter in regards to spatial plans issues.

P2T will hold another deliberation to make an agreement regarding form and amount of compensation to the rest of affected people that do not satisfy with the offers coming from government agency that needs land (*see Figure 4.1, p4*). To conduct this event, at least 25% of affected people still refuse the form and amount of compensation. The deliberation will occur until an agreement is reached for duration of 120 days. After this period, P2T make a report to

carry on the next step, payment of compensation. Compensation money for affected people that still do not agree with the form and amount of compensation will be consigned on court.

Affected people that still express objections to the form and amount of compensation issued by P2T can file their objections to Mayor or Governor or Ministry of Internal Affairs depending on its jurisdiction area. This file should be accompanied by explanation and reasons of their objections for duration of 14 days. Mayor or Governor or Ministry of Internal Affairs should provide firm decision about this matter in no later than 30 days. They could consider any opinion or desire of affected people, P2T, and government agency that needs land. Decision of Mayor or Governor or Ministry of Internal Affairs will be used as the final decision to compensate affected people who make objections. In case of disapproval, the government could propose resolution to utilize Act No. 20/1961 about Revocation of Land Rights and its Substances.

### ***Payment of Compensation***

Compensation is granted to the holder of land rights according to rule of the law or the caretaker ('*Nazhir*') of endowment property (*see Figure 4.1, p5*). In addition, compensation to land, buildings, plants and other substances related to land is given only to the primary rights such as property rights and management rights ('*hak pengelolaan*'). P2T orders government agency that needs land to make payment of compensation to affected people in no later than 60 days after it was decided if it is financial compensation.

In case of non-financial compensation, it depends on agreement between affected people and government agency that needs land. Non-financial compensation can be provided in the form of:

- Land and/or buildings or relocation as desired by affected people and agreed by government agency that needs land;
- For endowment property, land and/or buildings and other facilities whose values equal to released endowment property;
- For customary land, recognition such as public facility development or other beneficial development for local community;
- For land belongs to government agency or local government, it depends on decision of authorized officers.

### ***Consignment of Compensation***

P2T could orders government agency that needs land to consign compensation money to district court within jurisdiction area of the development plan due several circumstances such as (*see Figure 4.1, p6*):

- Affected people who have rights for the compensation whereabouts are unknown;
- Land, buildings, plants and other substances related to land are the object of lawsuit in the court and yet no legal standing;
- It is still disputed land ownership and yet no satisfied agreement among parties;
- Land, buildings, plants and other substances related to land are still confiscated by the authorities.

### ***Transfer of Rights***

In conjunction with payment of financial compensation, government agency that needs land makes a receipt for payment of compensation whereas affected people who have compensation rights make statement letter mentioning about hand over or release of land, buildings, plants and

other substances related to land. P2T will make official documents regarding transfer of rights (*see Figure 4.1, p7*). In terms of non-financial compensation, affected people still have to make the same statement letter whereas hand over or release of endowment property can be executed after authorized officers or institution in charge signs the letter of hand over according to rule of the law.

During the process of transfer of rights, affected people who have compensation rights have to submit authentic documents regarding their land which are:

- Certificate of land or ownership and tenure document;
- Deeds of legal action related to the land;
- Other deeds related to the land;
- Statement known by head of village (*'Kelurahan'*) or equivalent officers stating that the land really belongs to him/her.

Based on the statement letter and/or District Court order, there are several activities in the process of land acquisition within this step, as follow:

- Head of Municipal Land Agency records abolishment of released land rights on the great book of land (*'Buku Tanah'*), certificate, and other common registration entrées;
- For anyone who does not have land certificate; ownership and tenure document have to be recorded in land listing (*'Daftar Tanah'*) and head of village crosses out the list of related land in administration books at the village office stating that rights of related land have been handed over to government/local government for infrastructure development of public interest.

Land acquisition for government interest and for public interest that needs an area of 1 hectare or less could be done without the formation of P2T. In this case, the implementation can be executed directly through buying and selling, exchange or otherwise agreed upon.

### **4.3. Toll Road Development**

The history of toll road in Indonesia can be seen decades ago precisely in 1978 marked with the achievement of government to operate the 59-km-long Jagorawi Toll Road connecting Jakarta, Bogor, and Ciawi. It needs only three years to accomplish this lane by using government's budget and foreign loan. Involvement of Business Entities investment for toll road development began in 1987 with the signing of concession authorization agreement between government and PT. Jasa Marga (a state-owned company).

#### ***Principle of Toll Road Investment***

Based on Act No. 38/2004 about Roads and Government Regulations No. 15/2005 about Toll Roads, principles of toll road investment can be in general consist of following items, which are (BPJT, 2012):

- The government develops a general plan of national toll road network;
- The authority of toll road operation belongs to the government. Part of the authority includes regulating, managing and supervising the toll roads are carried out by the Toll Road Authority (BPJT);
- The funding of toll road investment comes from government and/or qualified Business Entity (private sectors or stated-owned companies) based on economic and financial feasibility;
- In certain situation where the development of toll road network cannot be done by Business Entity, government may take steps in accordance with its authority that is by carrying out the construction of toll roads in parts or in a whole;

- The provision of any or all scope of toll road concession is conducted through open and transparent bidding process. The winning bidders are then making Toll Road Concession Agreement (PPJT) with the government;
- The government conducts land acquisition process for toll road development. The source of funds may come from the government and/or Business Entity;
- Toll roads tariff are determined by Ability To Pay (ATP) of users, profit of vehicle operations and investment feasibility. Amount of the tariff is set forth in the PPJT and enforced when it starts operating. Tariff evaluation and adjustment is conducted every two year based on inflation rate and stipulated by Ministry of Public Works.

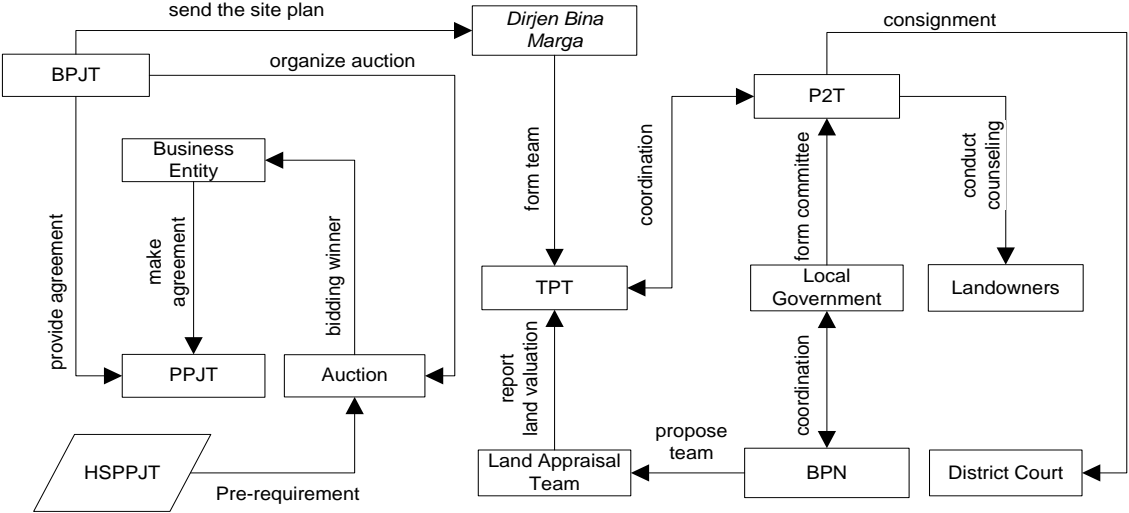


Figure 4.2 Institutional Framework in Toll Road Development

**Self-Estimation Price for Toll Road Concession (HPSPJT)**

BPJT forms committee to handle procurement of toll road concession which is recruited from elements of BPJT and other agencies if needed. This committee is fully responsible for the entire process of bidding for toll road concession including scheduling, prepare self-estimation price (HPSPJT), assess qualification of applicants, publishing, evaluation of bids, and propose the winning bidder candidates.

HPSPJT can be approved by BPJT on behalf Ministry of Public Works. This self-estimation price refers to investment value which is calculated based on expertise and justified data. HPSPJT serves as a tool for assessing reasonableness of concession price and/or toll road investment. This tool consists of financial aspects of auctioned toll road concession such as investment cost, construction cost, land acquisition cost, technical planning and supervision cost, concession period, projected profit/loss, cash flow projection, loan repayments adequacy ratio, Net Present Value, Internal Rate of Return, Profitability, Pay Back Period, and initial toll rates.

**Toll Road Concession Agreement (PPJT)**

Provision of toll road development refers to the magnitude of weights contained on two main aspects which are economical aspect and financial aspect. These aspects determine whether the toll road development would be held fully by government, partly between government and business entities, or fully business entities. Each provision of toll road involving business entities should be tied with PPJT. Generally, this agreement comprises of concession period, changes in

the concession period, performance bond, tariff and mechanism of adjustment, service performance standard, transfer of shareholder and/or shareholding structure, rights and obligations including allocation of risks, sanctions if not comply with PPJT, termination of PPJT, financial report of business entity, dispute resolution mechanism, and handover of infrastructure to the Minister.

Table 4.1 Investment Schema in Toll Road Development

Feasibility		Activities			
Economic	Financial	Funding	Technical Plan	Construction	Operation and/or Maintenance
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Government	Government	Government	Business entity
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Business entity	Business entity	Business entity	Business entity
<input checked="" type="checkbox"/>	marginal	Government, Business entity	Government, Business entity	Government, Business entity	Business entity

Business entities enthusiasm in toll road investment supports the government in providing toll road networks. This circumstance endorses the government to make planning to build at least 5,405 km of toll roads as part of national road network system. At the mid of second semester in 2012, 774.06 km-length of toll roads has been in function and 946.76 km of them has already signed between Business Entities and the government in the form of PPJT. Of 946.76 km-length of toll roads, more than 65% of them which is about 628.71 km of toll road development are in land acquisition process and preparation.

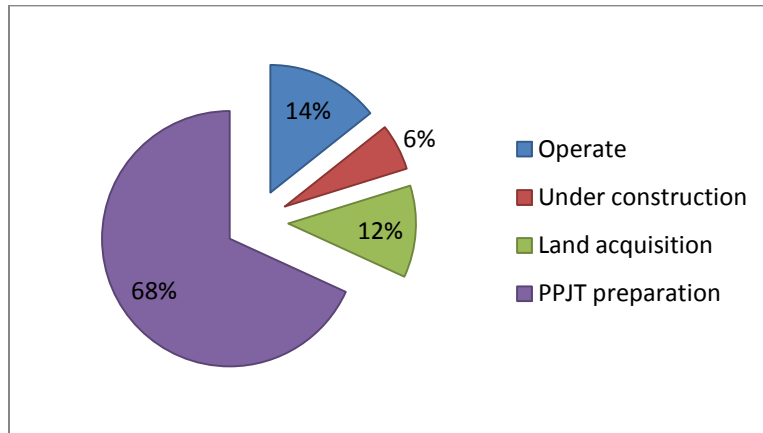


Figure 4.3 Toll Road Development Plan per October 2012 (BPJT, 2012)

There are about 25 PPJT in the stage of land acquisition and Detail-Engineering-Design (DED). Of all signed PPJT, only 2 of them are partly built by government and the remaining is fully conducted by business entities. Unfortunately, most of them are still experiencing problems in land acquisition process. Indeed, 13 PPJT signed in 2006 are still dealing with land acquisition process that could bring disadvantages to government, business entities, and community within the project area.



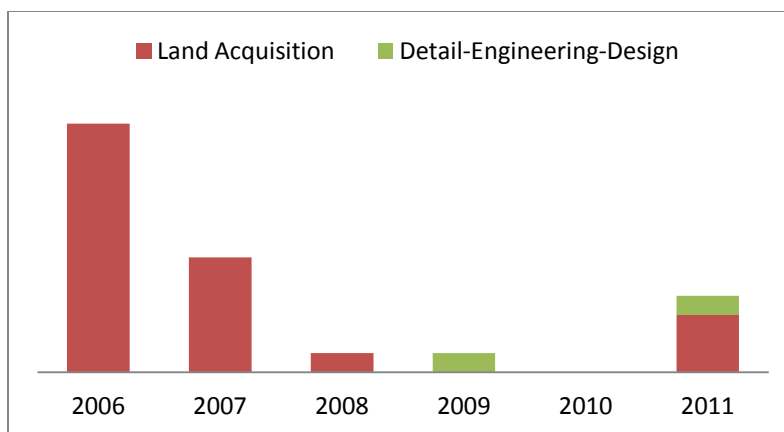


Figure 4.4 Status of Signed PPJT (BPJT, 2012)

Several policy instruments have been made to handle this situation including Policy in Acceleration of Toll Road Development which consists of:

- Provide regulations and rule of the law that support the acceleration of toll road development;
- Strengthen the institutional framework and toll roads management through the establishment of BPJT as the regulating body of the toll road sector;
- Form the Committee on Acceleration of Infrastructure Development which is chaired by Coordinating Minister of Economic Affairs;
- Towards toll road concession agreement that is more “bankable” and “investor friendly”
- Formulate a suitable system for adjustment of toll tariff;
- Manage land acquisition risks by preparing revolving fund mechanism through Public Service Agency (BLU) – BPJT and land capping.

#### 4.3.1. Land Acquisition for Toll Road Development

Toll road concession has been arranged in the regulation issued by Ministry of Public Works, Decree No. 11/PRT/M/2006 about Authority and Task for Toll Road Operator. The regulation describes distribution of activities in toll road concession which can be held by government itself or cooperation with business entities. Land acquisition scheme in toll road development consists of funding and execution. Execution of the process becomes the responsibility of Directorate General of Highways (“*Dirjen Bina Marga*”), a division under Ministry of Public Works while funding could be the responsibility of business entity. Besides that, operation and maintenance activities are given to business entities.

In the implementation of land acquisition, Ministry of Public Works forms Land Procurement Team (TPT) for toll road development under supervision of *Dirjen Bina Marga*. TPT has several important duties in conducting land acquisition process, which are:

- Cooperate with P2T to hold counseling and socialization;
- Hold deliberation in regards to form and amount of compensation with affected landowners;
- Make a nominative list signed together with P2T based on inventory and letter of pricing from authorized officers;
- Conduct payment of compensation upon land, buildings, plant and other substances related to land;
- Propose land rights and land certificate process in the name of Ministry of Public Works;
- Conduct physical safeguards (mounting peg for right of way, signboard of ownership), secure land certificates, maps and land acquisition documents;

- Monitor tax payments of the third parties related to land acquisition;
- Make report after completion and hand over documents of land ownership to *Dirjen Bina Marga*.
- In conducting the task, TPT has responsibility to *Dirjen Bina Marga*.

In accordance with land acquisition regulations, TPT has a role as representative of Ministry of Public Works that needs land for infrastructure development. Furthermore, cooperation regarding investment management between the government and business entities is a role of BPJT. Tasks related to BPJT responsibility can be described as follow:

- Inform *Dirjen Bina Marga* about any toll road development plan which may begin land acquisition process;
- Ensure the availability of Land Acquisition Fund that must be provided by Business Entities according to PPJT and/or the agreed Budget Plan;
- Ensure that the funds allocated by Business Entities must be used for land acquisition;
- Monitor the disbursement of funds which have been issued by Business Entities through Letter of Payment Request (SPP);
- Handover of acquired land to Business Entities.

#### **4.3.2. Revolving Fund and Land Capping**

Government Support is given to toll road concession funded by Business Entities in the form of revolving fund and land capping. BLU – BPJT manages revolving fund which can be harnessed for financing toll road development if land acquisition cost exceeds estimated limitation predetermined in PPJT. Ministry of Public Works Decree No. 12/2008 and Decree No. 2/2011 about “Procedures for the Implementation of Government Support to Land Acquisition for Toll Road Development funded by Business Entities” explain the condition required for business entities to obtain revolving fund from BLU – BPJT. *Land Capping* is a policy instrument enacted by government to provide certainty of investment in which the government will pay changes on land price above 110% of the agreed value in PPJT.

Procedures needed to use revolving fund for financing overestimated budget in land acquisition further regulated in Ministry of Public Works Decree No. 4/2007. Business entities and BLU-BPJT should make Revolving Fund Service Agreement (PLDB) which contains technical and administration terms to ensure rights and obligations of each party such as amount of interest, administration costs, and refund period.

#### **4.4. Land acquisition of Depok-Antasari Toll Road Development**

Depok-Antasari (Desari) toll road development plan (*see Figure 4.5, Radial 5*) is located in an area with good toll road network due its connectivity with several toll roads within the concept of an integrated toll road network 4 ring 8 radial in the greater Jakarta area. On the north side, it would be connected with toll road JORR S-section and Antarasari non-toll road network which is already established in February 2013. Meanwhile, southern part of the toll road will be planned to have connection with arterial road Bojong Gede-Kemang.

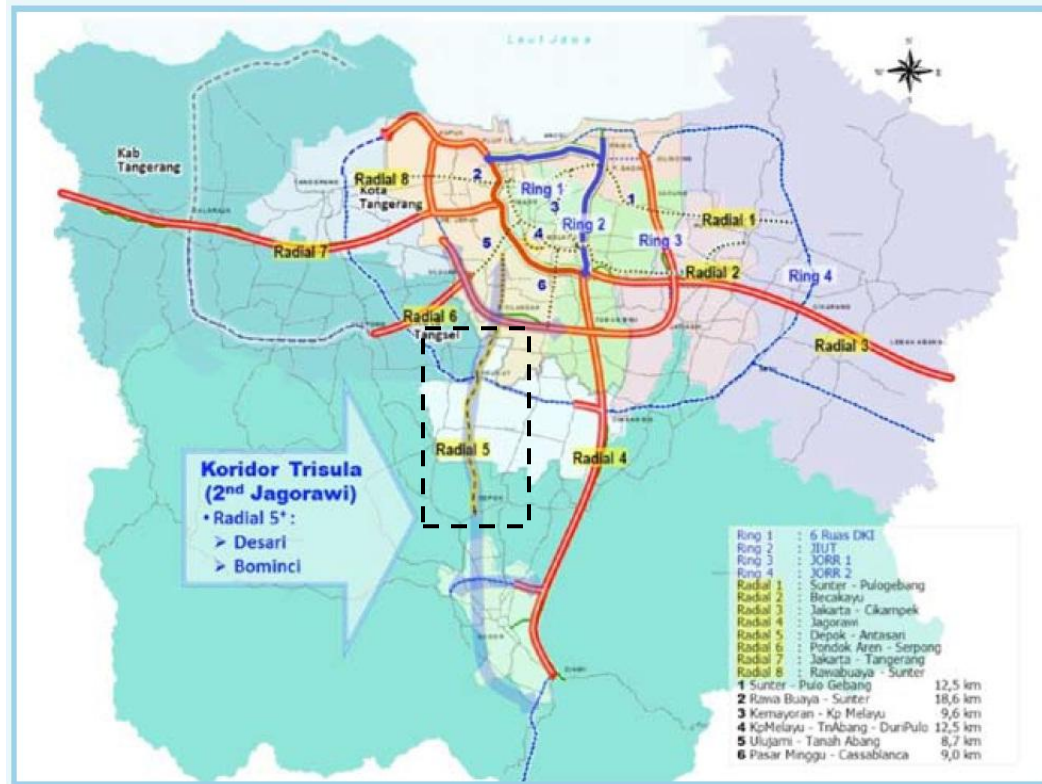


Figure 4.5 Toll Road Networks of Greater Jakarta Area

The existence of Desari toll road within a strategic corridor of Bogor-Depok-Jakarta offers highway with the level of needs which are relatively high. In this case, this toll road could be classified as urban toll road (northern part of the site plan) and semi rural toll road (southern part of the site plan).

#### ***Toll Road Concession Agreement (PPJT)***

This 21.5-km-long toll road network has been put into auction since 2005 by accommodating international competitive bidding principle. A year later the winning bidder is announced by committee for toll road concession which is PT. Citra Waspputowa (business entity of toll road) subsidiaries of PT. Citra Marga Nusaphala Persada Tbk. PPJT is then made between government and the business entity on 13 February 2007 with investment cost reaching IDR2,516 billion within 4 years of development including land acquisition cost at least IDR.699 billion (CMNP, 2012). In this period, land acquisition process was implemented thoroughly for all sections from Antasari (southern part of Jakarta) to Bojong Gede (part of Bogor Municipality).

Activities were carried on according to PPJT 13 February 2007 by forming P2T and TPT, conducting land acquisition process simultaneously in all corridors. Unfortunately, this was not last long due to escalation in land acquisition cost which is beyond what it was planned on their Business Plan year 2007. In 2008, implementation of land acquisition was stopped by the business entity to avoid any risks.

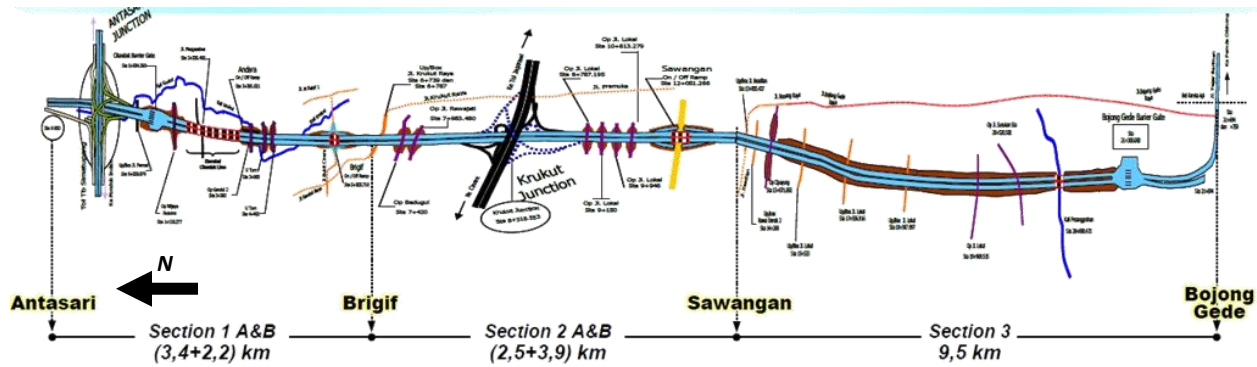


Figure 4.6 Desari Toll Road Plan by Sections

Renegotiation attempted to resume work on Desari toll road development between the government and the business entity of toll road. On 7<sup>th</sup> of June 2011, new concession agreement was signed by accommodating several issues to cope with uncertainty in schedule and cost of land acquisition, as follow (CMNP, 2011):

- Adjustment of initial toll tariff with reference on Group I of vehicle in year 2014 from IDR.816 to IDR.1,168 per km;
- Adjustment of concession period from 35 years to 40 years which is calculated from the issuance date of Letter to Proceed (SPMK);
- Provision of *Land Capping* policy instrument as a risk management associated to uncertainty of land acquisition cost;
- Provision of *Revolving Fund* from BLU-BPJT as a risk management associated to uncertainty of land acquisition schedule;
- Gradual construction implementation in which Phase I construction 12-km-long between Antasari-Sawangan will be executed prior to other phases.
- Provision of Loan Fund at the right moment associated with the progress of land acquisition;
- Financial Feasibility Reference (“*Acuan Kelayakan Finansial*”) is using a reasonable and common reference.

Table 4.2 Project Description based on PPJT 2011

<b>Trace length</b>	21.5 km
<b>Area</b>	179 Ha
<b>Concession period</b>	40 years, 2013 - 2053
<b>Total of investment cost</b>	IDR.4,767 billion or USD.529 Million
<b>Section I &amp; II</b>	IDR.2,999 billion or USD.333 Million
<b>Section III</b>	IDR.1,768 billion or USD.196 Million
<b>Schedule</b>	
<b>Stage I: 2014</b>	Section I & II
<b>Stage II: 2024</b>	Section III
<b>IRR</b>	16.75%
<b>NPV</b>	IDR.690 billion or USD.76 Million
<b>Payback</b>	2028 (14 years after it is in operate)
<b>Traffic volume projection</b>	
<b>Section I &amp; II (2014)</b>	49,128 vehicles per day

<b>Section I, II &amp; III (2024)</b>	93,738 vehicles per day
<b>Toll collection system</b>	Closed toll collection system
<b>Interchange</b>	Antasari and Krukut
<b>Crossing facilities</b>	11 overpass, 12 underpass, 10 pedestrian bridges
<b>Main road bridge</b>	6

#### **4.4.1. Stages of the Process**

The first land acquisition process in Desari toll road development was conducted in 2007 and followed by the second land acquisition process in 2011. In this period, regulations used for implementing infrastructure development for public interest were Presidential Decree No. 36/2005 and Presidential Decree No. 65/2006. Even though there is a new regulation Act No.2/2012 regarding land acquisition for public interest, any ongoing infrastructure developments must use previous regulations. In this case, the implementing regulation used in this project is Head of BPN Decree No. 3/2007.

##### ***Planning***

The first planning for Desari toll road development started in 2005 by proposing self-estimation cost (HPSPJT) during bidding offer. According to Business Plan 2006, schedule for conducting land acquisition would be 24 months from May 2006 until April 2008. Land acquisition process is executed simultaneously in all sections between Antasari and Bojong Gede within about approximately 22 km long. In this period, payment of compensation was only reaching 6% of the target. Meanwhile, new PPJT with Business Plan 2011 is planned to last for 24 months from April 2011 until March 2013.

Land acquisition process for period of 2011-2013 is implemented partially. The first phase is divided into 2 sections which are Section I Antasari-Krukut and Section II Krukut-Sawangan while the second phase or Section III will be developed between Sawangan and Bojong Gede. The implementation of land acquisition process will be started from the first phase in which Section I Antasari-Krukut is the priority of construction.

##### ***Determination of Site***

Ministry of Public Works invited elements of local government especially Regional Planning Agency (Bappeda) to examine Desari toll road development plan in accordance with Spatial Plans (RTRW) issued by Spatial and Settlement Agency of Depok municipality. After consultation with local government including Depok municipality, Decree of Site Determination (SKPL) consisting of trace plan, list of affected urban villages was issued by Governor of West Java in 2006.

##### ***Implementation***

Implementation of land acquisition for Desari toll road development was started in 2007. P2T formed by Mayor of Depok municipality consists of Agricultural Agency, Spatial and Settlement Agency, Division of Governance, and Municipal Land Agency. Meanwhile, Ministry of Public Works through *Dirjen Bina Marga* formed TPT Desari as representative of government agency that needs land.

In the first period, only 6% payment of compensation realized in 2008 within southern part of Jakarta while no payment of compensation has been made in Depok municipality. The second period of land acquisition process was conducted in 2011. Until May 2013, only 3 urban villages

("Kelurahan") are in process of 8 villages planned within Section I. During the research, land acquisition process is still in payment of compensation step.

#### Counseling

P2T, TPT Desari, and elements of Depok municipality including the Mayor of Depok conducted counseling and socialization which is held at School of Judicial, *Kelurahan Gandul* in 2007. This event was attended by all affected landowners from different urban villages traversed by toll road development plan. Information delivered at the counseling includes schedule for land acquisition in year 2008, construction phase in 2009, and toll operation in 2010. Besides that, it is informed that affected landowners would not suffer losses due to land acquisition instead fair compensation would be implemented. In this respect, majority of affected landowners agree with the scheme and Desari toll road development plan can continue to further steps.

#### Identification and inventory

P2T conducted identification and inventory in 3 urban villages which are Pangkalan Jati Baru, Gandul, and Krukut. This step results map of land parcels and lists of affected landowners that explain more detail information regarding parcels of land, extent of land parcels exposed by the project, name of affected landowners, and land title. This information is made by Municipal Land Agency of Depok and given to urban villages' office in order to be published for local people.

#### Land valuation

Auction to designation of Appraisal Team was conducted by Ministry of Public Works with recommendation from Municipal Land Agency. From the auction, only one Appraisal Team would be chosen to perform land valuation. The result of land valuation is given to P2T and TPT of which affected landowners can ask directly how much their land price. The land price consists of two ranges of value which are the lowest and the highest price.

Valuation of Appraisal Team is independent without any intervention from other parties. In the field, difference in land prices is influenced by zoning system in which division of zoning system can be various among urban villages. Meanwhile, valuation of buildings, plants and other substances related to land was conducted by local government agencies within their jurisdiction area.

#### Deliberation

Deliberation was conducted several times to make an agreement with intention to obtain willingness of affected landowners. The deliberation is directed to make affected landowners agree on the result of appraisal and attempted to pursue financial compensation. Any objections were delivered to P2T through special form defined by Ministry of Public Works. P2T received any objections and made resolution according to appraisal results. In case of refusal, affected landowners can send the objections to Mayor of Depok municipality in which Appraisal Team could make re-evaluation upon request from the Mayor.

#### Payment of compensation

TPT Desari conducted payment of compensation to affected landowners who agree with the form and amount of compensation. Land needed for the first priority Phase I Section I (Phase IA) with 8.1 km long consists of 670 parcels of land covering approximately 19 hectares located in southern Jakarta, and 970 parcels of land covering approximately 58 hectares located in Depok. Furthermore, land needed for Phase I Section II (Phase IB) with 3.9 km long consists of 729 parcels of land covering approximately 31 hectares located in Depok. Until May 2013, 281

parcels of land have been compensated precisely 172 parcels of land in Depok municipality and 109 parcels of land in southern Jakarta.

Table 4.3 Paid Parcels of Land per 20 May 2013

<b>Municipality</b>	<b>Urban Village ("Kelurahan")</b>	<b>Years</b>	<b>Parcels of Land</b>	<b>Total Area (M2)</b>
Depok	Gandul	2012	70	72,281
Depok	Gandul	2013	12	17,647
Depok	Pangkalan Jati	2012	26	10,427
Depok	Pangkalan Jati	2013	64	24,282
			<b>172</b>	<b>124,637</b>

## Chapter 5 Results and Analysis

This chapter contains the results of research including interviews, observation, and literature reviews as well as content analysis, narrative and coding analysis. Three main categorizations of the results will be explored namely external perspective, internal perspective and landholders characteristic and preferences. From this point, analysis will lead to formulating inhibiting factors that hamper the process of land acquisition in Desari toll road development and framing criteria that would form a fair balance compensation scheme as well.

### 5.1. Result of Field Research

Primary data gathered within field research can be classified into three layers. The first layer is opinion from external entities in viewing land acquisition in Indonesia. In this layer, experts and NGOs can be reliable data source. These respondents share wider perspective regarding implementation of land acquisition and several issues which may be improved. The second layer would be policy instruments used in land acquisition process in an attempt to pursue fair and affordable compensation scheme. This layer refers to regulations and rule of the law that support the principles of fairness. Lastly, the third layer focuses on affected landowners perspective regarding form and amount of compensation offered by government agency in exchange for their land and belongings related to land.

#### 5.1.1. External Perspective

Before conducting field research in the site plan, interviews were planned to several experts and NGOs related to the issue of urban development and land management. Due to limited time and availability of interviewees, each issue is represented only by an expert in the field of urban development and an NGO which concerns on equity issues on land management. Fortunately, several interesting issues appear during interviews related to equity and efficiency in land acquisition.

#### *Fairness/Equity*

Perspectives of external entities in regards to land acquisition process are much broader. In their view, fairness should be considered for a whole society related to the project development for public interests including multilevel government, affected landowners, communities, private sectors, etc. This group mentions several requirements that would lead to fairness:

- Strong regulators  
Government should participate in the development stage by making plans as well as implementation of the plans to ensure that society would benefit from the development plan such as ensuring development of supporting facilities.
- Mediating system  
Affected landowners and parties that need land are not negotiating directly. There should be a mediating system that could manage rights and obligations of each party. Stronger party could influence the outcome of negotiation from both parties in which such things may impede the achievement of justice.
- Clear benefit and cost  
Affected landowners and local community should understand their advantages and disadvantages for the development plan. Each party has its own contribution to realize the



development plan that would give benefit for everyone in different ways. Investment cost should be provided by public sector includes government and society. For instance, society benefiting from existing infrastructure in their area would have to pay more taxes. Meanwhile disadvantages may occur due to some externalities of the development plan such as limited accessibility and interrupted spatial pattern.

- **Participation**  
All related actors should participate in the development plan to obtain common understanding among them. Consequently, this circumstance would give obvious legitimacy on the development process.
- **Transparency**  
Benefit and cost occurred due to development plan should be clearly informed to affected landowners and communities. This condition ensures all parties know any consequences that would be experienced by them.
- **Empowerment**  
Capability of affected people to question, know, inform and consider the determination of site is provided. This means each party has equal treatment in land management. In this case, vulnerable members of society should also get attention although they may not have strong legal standing of their land.

### ***Efficiency/Affordability***

In general, views from the concept of efficiency especially in terms of infrastructure development more emphasize on economic and financial aspects. In bigger frame, the concept should also consider efficiency in spatial planning which is related to the role of infrastructure development in making spatial pattern becomes efficient through time. As time goes by, inefficiency in spatial pattern may occur due the development plans that lack of integrated spatial planning.

Irregularity in spatial pattern due to any development project causes significant losses to many parties. Weaknesses in managing spatial arrangement affect livelihood condition of local community. For instance, they would have to spend a lot of money to renovate their houses due to loss of access to the main street. Besides that, retaliation could occur against the result of development in many ways that causes losses to business entities. According to research conducted by the expert, forms of retaliation can be seen on several toll roads in three cities in Indonesia which are Surabaya, Semarang, and Makassar. Monthly operational costs incurred are very significant to replace damaged road markings, clean the road from garbage, and overcome thefts on toll road assets. These circumstances could happen unconsciously due to several reasons such as dissatisfaction with compensation, lack of waste disposal and drainage facilities.

On the other hand, advantages from toll road development can be harnessed by government, business entity and local community. Local community may enjoy an increase of land value. In this case, restructuring irregular spatial pattern especially in growing region near the development site can ensure the increase of land value.

### ***Financial Compensation***

In providing compensation, it is important to consider any inherent value of the land such as neighbourhood condition, occupation, children playground, school, emotional ties, etc. These values become an issue that would inhibit the process of land acquisition. Actually, people do not antipathy towards infrastructure development instead they think about the implication of the

development to their living condition. In this case, the development plan should be able to minimize the impact of the project.

Financial compensation may find difficulties in formulating inherent value of land in the form of money. It is not an easy task to find common ground in valuing the losses between affected landowners and government agencies that need land. Apart from that, the next important matter is how to manage the money given wisely. Associated with it, several issues become the main focus of discussion regarding the weaknesses of financial compensation, as follows:

- **Depreciating of money while increasing of land value**  
Land acquisition process has several stages before delivering compensation. There would be deliberations, negotiation, objections, and other laborious activities which consume a lot of time. Amount of compensation received by affected landowners is not always simultaneously exchanged into another property in which there would be a process requiring sufficient time. Meanwhile, trend of rising land prices are very likely to occur due to the prospect of adjacent area to become more valuable with the existence of upcoming infrastructure.
- **Loss of opportunity**  
By moving to another place, affected landowners would suffer from loss of opportunity in the previous place. They have to bear opportunity cost in new place which also requires considerable time and effort.
- **Risk of declining living condition**  
Financial compensation provides affected landowners very wide options to allocate their money including rebuilding their houses. Apparently, they would do it separately depends on their ability and preferences which in turn will lead to irregularity in spatial pattern. Irregular spatial pattern tends to have lower land value. Moreover, it is common that its environment condition would not be supported by good accessibility and facility.
- **Risk of landless**  
Landless could possibly happen to marginal people that do not have ability to manage their own money after receiving compensation. Due to mismanagement, they could not be able to buy land, to build houses, or even to rent a decent house.

### ***Non-Financial Compensation***

It is important to prepare the impact of land acquisition to affected landowners in order to avoid poverty or social problems which are possible to occur in regards to risks associated with financial compensation. Understanding on compensation issue is not only about the object of development plan itself but also the society as a whole. Hence, government should support vulnerable groups of affected landowners by providing alternative options pertain to forms of compensation. In addition, government could also have a role in providing accompaniment to help them sustain.

Apart from financial compensation, non-financial compensation provides wider alternative options that can be harnessed by affected landowners, government and business entities as well. The use of non-financial compensation continues to grow in many countries in Asia such as Japan, Korea, Taiwan, and Malaysia. Besides that, it is also extensively used in the United States and European countries. Several advantages of non-financial compensation can be described as follows:

- Better spatial arrangement  
This benefit specifically relates to land replacement, relocation or resettlement. It would occur if the development is conducted according to plan, regulation, and consistent with RTRW (Spatial Plan). Spatial arrangement is not only rearranging land to become more organized but also the provision of supporting facilities.
- Learning process for government and society  
Non-financial compensation needs more intense communication between government and affected landowners to know preferences of landowners, to persuade them with certain program that would foster spatial arrangement, and to invite the community to be an important part in the provision of infrastructure. In this way, government would have better understanding on their people whereas society as a whole would have experienced towards forms of compensation.
- Institutional modernization  
It is essential to build institutional capacity in order to balance with forms of non-financial compensation. Networks between each institution should be better formed to keep up with development of non-financial schemes. Activities to support non-financial compensation within related institutions to answer any new challenges emerging from the community would make them more advanced.

In Indonesia, non-financial compensation is rarely implemented due to some reasons. First of all, non-financial compensation needs more effort in the sense of thoroughness and patience. Each involved actor has to spend their time and energy to find better understanding. Generally, it takes much time to prepare, plan, and implement the compensation scheme than the financial compensation. Meanwhile, *culture instant* still influences the way actors act and think. Secondly, better communication and negotiation skill are needed to convince affected landowners about the offered programme. In Japan, personal approach is conducted to reassure people by door-to-door negotiating skill during 7-10 years period. Lastly, there is lack of supporting regulations that have civil effect. It is necessary to establish rule of the laws which is not only for the shake of implementing agencies but also has direct impacts to the community as well. Actually, non-financial compensation may be supported as long as several items can be met during preparation, planning and implementation, which are:

- Awareness of related parties  
Rights and obligations of non-financial compensation need to be fully understood and acknowledged by all involved actors for they could have better implementation.
- Reduce culture instant  
Willingness of all actors to support non-financial compensation scheme with thoroughness and patience is very much expected to achieve objectives of the scheme.
- Increase capacity to negotiate and communicate  
Government officers should have better capability and understanding to inform, convince, and reassure affected people to accept forms of non-financial compensation as an alternative option. Well-informed non-financial scheme could raise the possibility of affected people in accepting the offered programme.

- **Participation of society**  
Communities should be involved in implementation of non-financial scheme in order to create trust and confidence in terms of benefits they would receive and other things they should fulfil.
- **Supporting regulations**  
Non-financial scheme requires set of regulations to facilitate and provide security to government officers to conduct its implementation in the field. Clear system and procedures may help government officers to communicate and negotiate with affected landowners.
- **Strong planning influence**  
Planning should be the driving force of any land development activities. Weak planning influence can be set by market force in which utilization of land would be focused only on profitable measurement without any special attention to other important aspects. Assurance from government is needed to convince affected landowners that non-financial scheme is well-planned and supported by long-term development plan.
- **Equal treatment**  
Each involved parties should be treat equally during negotiation process. Participation of every member of society at the same level could build strong consensus among them.

According to Presidential Decree No.36/2005 and Presidential Decree No.65/2006, there are several non-financial compensations mentioned as alternative options to financial compensation. This scheme includes land replacement, and relocation/resettlement. Subsequently, non-financial compensation in the form of shares is also exposed in the new regulation. Based on interviews, some important issues were raised regarding specific forms of non-financial compensation which are relocation and shareholding.

#### Relocation

Government should ensure that affected landowners could obtain at least the same living condition and they could sustain economically and socially. This notion can only be done with integrated relocation in which the programme should be conducted according to plan, regulations, and RTRW (Spatial Plans). This group mentions several items that could hamper the implementation of relocation. Firstly, relocation must be located within growing region. In this case, affected people need prospective area for their future development. They would not accept to be relocated into undeveloped area. Secondly, it is common that the parcels of land provided in the relocation area will be smaller. This occurs because some parts of the land will be used for supporting facilities such as road and drainage. Indeed, other form of relocation such as vertical land consolidation may only give shared ownership of land. Lastly, lack of understanding on mechanism of relocation could inhibit the process.

#### Shareholding

Actually, shareholding is a good form of compensation that would be enjoyed by shareholders in longer time depends on the ability of business entities to survive and earn outstanding profit. Meanwhile, advantages from the share can only be obtained when the business entities make a profit and normally the profit is given in certain periods. Unfortunately, this is not the case for affected landowners. Most of them want immediate actions to fulfil their basic needs such as new houses to live with their family or new capital to develop their business.

### 5.1.2. Internal Perspective

This part covers the result of interview from actors involved in implementing land acquisition policies in Desari toll road development. The result of interview is obtained by explaining four-staged governance activities proposed by Loorbach & Rotmans (2010) as research strategy, which are strategic level, tactical level, operational level, and reflexive. Principles endorsed in managing land acquisition can be seen clearly in regulations and rule of the laws about land acquisition for public interest prevailing in Indonesia. These principles are the basic foundation to elaborate policies which are implemented in the lower level. In case of Desari toll road development, principles used in conducting land acquisition are obtained from Presidential Decree No.36/2005 and Presidential Decree No.65/2006, as follow:

- Fast process
- Transparency
- Upholding land rights
- Legal certainty

Actually, Act No.2/2012 accompanied with Presidential Decree No.71/2012 and Head of BPN (National Land Agency) Decree No.5/2012 have been issued as a new regulation in land acquisition for infrastructure development of public interest. These regulations are prepared to replace the previous version. Meanwhile, in this context the previous regulations still prevail in which the implementation guidance for land acquisition process in Desari toll road development refers to Head of BPN Decree No.3/2007. Land acquisition implementation consists of 7 steps which are counselling; identification and inventory; land valuation; deliberation; payment of compensation; consignment of compensation; and transfer of rights. During each step, there are several notions which can be found in the land acquisition process and interviews as well.

#### ***Fairness/Equity***

Government assures that implementation of the regulations will refer to the principle of “*equality before the law*” which means everyone is treated with the same manner. There will be no gender disparity during land acquisition process including deliberation and negotiation. Element of fairness is implemented procedurally as mentioned in the rule of law:

- Building class  
Assessment of building depends on certain classes which are categorized by percentage of building components.
- Zoning system  
Appraisal Team calculate the land price based several possible factors such as accessibility, land morphology, soil condition, and landuse. The result of the assessment could be delivered in the form of data, map of land zone, and/or land market price.
- Deliberation  
All affected people are invited to join any meetings held by P2T (Land Acquisition Committee) and TPT (Land Procurement Team) discussing site determination as well as forms and amount of compensation.
- Verification process  
Certificated land and non-certificated land are recognized in order to obtain compensation. The only difference is that during filing of land documents, the one who has certificated land does not have to go though a complicated verification process.

### ***Affordability/Efficiency***

According to BPJT (Toll Road Authority), toll road development plan can be categorized as efficient if the plan could meet economic and financial aspects. Economic aspect tends to be a role of government to encourage economic growth by providing good accessibility whereas financial aspect relates to joint-cooperation between government and business entities in funding the infrastructure. This joint-cooperation should be based on advantages which can be acquired by business entities as an exchange on the funding. Several items which are considered in affordability issue, as follow:

- **Funding**  
Financing of Desari toll road development is obtained from investment cost proposed by business entity according to PPJT (Toll Road Concession Agreement) which follows efficiency-based justification meaning that government decision to make development plan in accordance with financial feasibility. Due to escalation on land price, Government Support is issued to continue the project. In 2011, IDR.380 billion of revolving fund has been given as a loan from BLU (Public Service Agency) to support land acquisition process. In addition, IDR.2 trillion will be subsidized as part of Government Support within *Land capping* programme to accomplish land acquisition in 2 sections (Phase I) (TEMPO.CO, 2013). Unfortunately, amount of budget spent cannot be well-measured since it depends on ability of business entity to cover the costs and willingness-to-sell of landowners.
- **Appraisal team**  
Land assessment is conducted by Appraisal Team who has license from both Ministry of Finance and National Land Agency. They work independently without any intervention from other parties. In doing the task, Appraisal Team do not make foundation for calculation based on type of investment either social overhead capital or economic overhead capital. Besides that, they could set an added value to properties so called premium value which is different for each parcel of land. This facet is taken from field survey and usually not covered precisely in the business plan.
- **NJOP (Selling Value of Tax Object)**  
Government does not have reasonable reference in budgeting for land acquisition. They may use NJOP as reference issued by Directorate General of Taxes. This value is an important item in PBB (land and building taxes) which is collected from community each year, and BPHTB (land and building acquisition taxes). In the field, payment of compensation can reach 5-6 times of NJOP. Meanwhile, there is normally not enough adjustment on NJOP after the development accomplished.
- **Time scheduling**  
Government sometimes does not set firmness in time scheduling. Several deliberations can be conducted to gain willingness of affected people. In a deliberation, there could be some people agree with the amount of compensation and accept the payment. Apparently, possibility to get higher price in upcoming deliberation is very likely to occur. Hence, many people would consider to withholding their land hoping that they would obtain higher offer. This circumstance could lead to prolonged land acquisition process.

### ***Compensation***

Government has provided alternative forms of compensation in the rule of law including land replacement, relocation, and shareholding. Generally, financial compensation is pursued due to

several advantages such as the process is faster, more obvious, and the procedure is not complicated. In addition, during negotiation process, TPT does not find any people asking for relocation or land replacement except for school, place of worship and endowment land.

The use of non-financial compensation is normally applied on relocation of government assets. This mechanism is regulated in Ministry of Internal Affairs Decree No.4/2007 intended to manage local government assets and Government Decree No.6/2008 especially for central government assets. For non-government assets such as private landownership, there are several issues hampering the use of non-financial compensation, as follow:

- **Insufficient fund and budget**  
Local government has intention to implement land banking mechanism which is very helpful in ensuring availability of land while there are demands from government agencies that need land for replacement or resettlement. Unfortunately, lack of budget becomes an obstacle for realizing the purpose.
- **Weak implementing regulations**  
Law certainty in viewing forms of land tenure is needed to provide safety for field officers in conducting the process of land acquisition. In addition, clear elaboration of tasks and responsibility to each involved apparatus is important to provide good public services by increasing role of local government. Apart from that, technical and implementing guidelines for certain non-financial scheme are not covered comprehensively in the prevailing regulations in Desari toll road development.
- **Difficulty in finding suitable location for replacement land**  
Different interests in choosing the location may occur between government and people as well as among affected people. Besides that, the possibility of speculators may engage during procurement of land for new settlement is very huge.
- **The mechanism is too complicated**  
In case of relocation or resettlement, there are some steps to be conducted such as ensuring the availability of land for new settlement, and building the houses. These activities need much time and effort.

### **5.1.3. Landholders Characteristic and Preference**

Land acquisition process in Desari toll road development is restarted in 2011. The first phase of development, section I and II, stretched from part of southern Jakarta and Depok. In Depok municipality, merely 3 urban villages (*'Kelurahan'*) have entered process of land acquisition which are Pangkalan Jati, Gandul, and Krukut. In this case, observation and interviews were only focused on communities living in these villages, namely Forkom Desari (Communication Forum of Desari Toll Road Development), Cultivators, and Kempa's descendants.

#### ***Characteristic***

Gaertner & Schwettmann (2007) argue that perception on equity issues could be influenced by political, social, and cultural dimension of country. In smaller scale, observing characteristics of community affected by Desari toll road development could help researcher understand preferences of each community itself and equity issues that they perceive in the process of land acquisition. From each *Kelurahan*, interviews were conducted to representatives of community at the site affected by toll road development plan. In *Kelurahan* Pangkalan Jati, researcher interviews caretaker of Forkom Desari which has at least 270 members. In *Kelurahan* Gandul, interviews were intended to group of people living in arable land belongs to state-owned

company. In *Kelurahan* Krukut, several families who have close genetic relationship as descendants of Kempa's family were interviewed.

Table 5.1 Characteristics of Affected Community

	<b>Forkom Desari</b>	<b>Cultivators</b>	<b>Kempa's descendants</b>
<b>Kelurahan</b>	<i>Pangkalan Jati</i>	<i>Gandul</i>	<i>Krukut</i>
<b>Level of Dev.</b>	<i>Developed ('swasembada')</i>	<i>Developed ('swasembada')</i>	<i>Developing ('swadaya')</i>
<b>L.A. Step</b>	<i>Payment of compensation</i>	<i>Payment of compensation</i>	<i>Identification and inventory</i>
<b>Landownership</b>	<i>Landowners</i>	<i>Occupants</i>	<i>Landowners</i>
<b>Community</b>	<i>Urban community</i>	<i>Urban community</i>	<i>Semi-urban community</i>
<b>Living condition</b>	<i>Good</i>	<i>Good</i>	<i>Good</i>
<b>Status</b>	<i>Mostly Middle and High income</i>	<i>Middle and Low income</i>	<i>Middle and Low income</i>
<b>Position</b>	<i>Strategic</i>	<i>Strategic</i>	<i>Less strategic</i>
<b>Density</b>	<i>Very dense</i>	<i>Dense</i>	<i>Less dense</i>
<b>Condition</b>	<i>Settlement</i>	<i>Riverside</i>	<i>Mostly farming</i>
<b>Accessibility</b>	<i>Main road Jl. Andara</i>	<i>Local road</i>	<i>Village road</i>
<b>Affected area</b>	<i>Along the road</i>	<i>Along the river</i>	<i>Large (planned junction)</i>

### **Preferences**

Interviews with the communities were conducted through open discussion, friendly conversation, and emphasis on certain topics which have been prepared earlier, although possibility of other unexpected matters would rise. During interviews, several important notions emerged as a combination of their desires, expectations, and needs within land acquisition process, namely:

- **Certainty of the process**  
Mayor or Governor issues a decree regarding determination of location as site plan for Desari toll road development. Consequently, affected people whose land is located on the site plan should not conduct land sales. According to regulation, purchase of land on the site plan should have written approval from Mayor or Governor depending on their jurisdiction area. Unfortunately, land acquisition process in Desari toll road development occurs in a lengthy period that would adverse affected landowners economically and psychologically. Land acquisition process should be conducted in timely manner to avoid an increase of land price in nearby areas. In this case, affected people may not afford to buy land close to their place.
- **Equal position in negotiation process**  
In particular, some communities request that any affected people who want to negotiate regarding amount of compensation should be accompanied by representative of communities to minimize unfair negotiation process, especially for marginal people. Apart from it, the importance of clear legal position of landowners in delivering objection should be protected.
- **Re-evaluation of measured land**  
The result of measured land size sometimes does not satisfy affected landowners. They want delivery of measurement data should be examined carefully.
- **Reasonable market price**  
The land price should be minimally the same with market price by which people can afford to buy land and build house within the area nearby. Indeed, affected landowners expect to



obtain higher land price since the land needed for toll road development. In addition, calculation of premium value should be informed clearly. After making assessment, issuance amount of compensation for land, building, and plants should be uniformly delivered.

- **More transparent in zoning system**  
Some members of community expect that there would be no zoning system for toll road development. All parcels of land should be treated equally in terms of land price since the site is used for the same purpose. Other members want the mechanism to implement zoning system should be more transparent and reasonable.
- **Protecting vulnerable households**  
According to the conversations, mostly middle and low income people tend to pursue financial compensation due to several reasons such as paying debts, in treatment, and having small business plan. Moreover, these people appreciate government intention to compensate all parts of the properties including village roads, plants, etc. Meanwhile, occupants of state-owned company hope that there would be a solution for them since they cannot afford to build house although the only compensation for building will be given by TPT through the landowners.
- **Considering resettlement**  
Of three possible forms of non-financial scheme, relocation or resettlement is regarded as the most acceptable alternative option for them. Mostly middle and high income people agree with this offer. They want relocation can be done through deliberation to obtain appropriate site which at least has the same condition with their existing properties. For the occupants of state-owned land, they hope that they would be relocated into a nearby flat with low-rent tariff. Land replacement is also considered as a possible solution but they do not want to spend time for building house while they need place to stay immediately after eviction. Meanwhile, the use of share as an alternative option is only understood by mostly high income people. However, they feel that management of share in Indonesia still needs to be improved.

## **5.2. Analysis**

Three perspectives regarding land acquisition process in Desari toll road development have been described. According to external perspective, fairness could be achieved by promoting strong regulators, mediating system, clear benefit and cost, participation, transparency, and empowerment. The second perspective embraces affordability/efficiency issues in conducting land acquisition process which are Government Support in funding, independency of Appraisal Team and its consequence to business plan, inaccurate use of NJOP as reference, and unrestricted time scheduling. These notions very much affect affordability/efficiency of the development in terms of availability of funds, use of funds, and when the funds are used. Meanwhile, equity issues felt by landowners and occupants during land acquisition process, namely certainty of the process, equal position in negotiation process, re-evaluation of measured land, reasonable market price, more transparent in zoning system, protecting vulnerable households, and considering resettlement.

### **5.2.1. Inhibiting Factors**

Based on the result of field research and interviews, several issues relate each other that would be formed into factors inhibit the process of land acquisition in Desari toll road development.

These factors reveal different perspectives regarding several issues in the whole process of toll road development between landholders, officers and other involved parties. In addition, particular shortcomings that still need to be improved are exposed. Finding of these factors in the field can be elaborated as follow:

- **Different views on the project**  
According to rule of the law, toll road becomes part of public interests that needs government attention and participation. Government has a role to provide toll road for society in order to foster economic growth and increase accessibility among regions. Meanwhile, private sectors' involvement in financing toll road development and the use of toll road for those who have financial capability make the project is considered differently by community. Even though land acquisition for toll road development is considered as procedural fairness in which it has been stated in the regulations, community thinks that they might be granted to receive disproportionate benefit.
- **Unexpected field condition**  
Planning of toll road development which is less comprehensive especially in estimating possibility of properties being evicted for the development is not well-covered. Generally, estimation of land acquisition costs is based on NJOP used for appraising land value whereas building value can be unexpectedly higher. Besides that, characteristics of people in the region should be examined thoroughly to obtain their tendency and expectation toward certain projects. According to Equity Principle, NJOP certainly should be used as reference to make compensation since the land and building value stated in NJOP are commonly used as indication for tax amount that must be paid each year. However, this circumstance would contradict with Need Principle in which affected people may not afford to buy a new house by using compensation money since the current price of land and building are much higher than NJOP.
- **Different views on market price**  
The existence of mushrooming luxury housing estate along the site plan affects society's view on the value of their property. In fact, fantastic prices of related housing are not the real value yet they are added with opportunity value due to facilities supporting the housing. Meanwhile, Appraisal Team tends to calculate properties according to the real value. Delay in Desari toll road development for years and limited time of pre-emption mechanism give opportunity for developers to build housing by taking advantage from the existence of toll road development plan. Lack of distributive justice mechanism especially for those who get benefit from toll road development plan contributes inequality among community.
- **Less certainty of time scheduling**  
Firmness and certainty in the process of land acquisition should be made. Each step needs specific timeframe to avoid delays. Delays could pave the way for speculators to enter and make profit. Besides that, tendency of people living in adjacent area close to the site plan to increase their land value may occur and it would trigger affected people to raise their willingness-to-sell value.
- **Lack of dedicated officers**  
It is common that tasks for conducting land acquisition process are held by officers from certain government agencies. Actually, workloads of each officer especially in urban areas are already high. By appointing them, two responsibilities should be borne at once therefore ability to dedicate on one task cannot be achieved perfectly.

- Lack of alternative options  
 Capability of field officers to explain other alternative options related to compensation should be improved. This will increase possibility of win-win solution between government agencies that need land and affected landowners. Moreover, advanced actions and availability to realize the options should be supported by good policy and regulations. Options are needed to set wider opportunity of affected people to meet their expectation and need. Hay (1995) captures this notion as *equal choice* in which equity can be achieved through distribution results from “*informed individuals choosing over equal choice sets*”. In the field, state-owned companies and government assets are intended to conduct relocation or land replacement while private landowners are intended to pursue financial compensation.
- Weak implementing regulations  
 There should be firm regulation to provide safety for field officers in conducting land acquisition process, especially in regards to non-certificated land issue. As long as they follow firm regulation, officers should be supported in taking decision regarding proof of landownership. Besides that, several implementing regulations related to non-financial compensation especially for private landownership should be provided to help both TPT and P2T make decision to implement the scheme. The importance of rule of the law and regulations to endorse procedural fairness is perceived by officers in the field. It is hard to make decisions among affected people without comprehensive guidance since forms of justice are vary depending on people’s preference.

**5.2.2. Criteria for Fair Balance**

By analysing these perspectives, fair balance compensation scheme can be reached by accommodating equity issues faced by affected landowners into such criteria which can be conformed to affordability issues in accordance with internal perspective. From this point, items towards fairness promoted by external perspective can be harnessed as a guideline to form criteria for a fair balance.

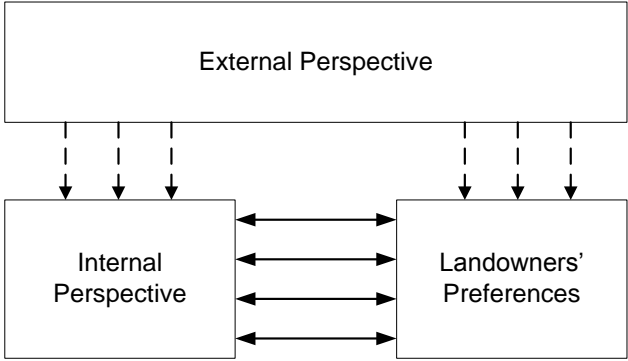


Figure 5.1 Forming Criteria for Fair Balance

Distribution of available funds should be executed carefully to avoid burdening government spending. In this case, it is important to provide several criteria for a fair balance compensation scheme, as follow:

- Comprehensive regulations  
 Regulations and rule of the law should cover complete procedure and mechanism related to land acquisition process. Each step should be restricted with clear timing and responsibility

to avoid delays. By following regulations, field officers can safely execute the rule and they do not have to make much discretion. Landowners will have alternative options in accepting compensation. In addition, they will have certainty about their future plans.

- **Open system**  
All involved parties should aware their rights and obligations as well as advantages and disadvantages of the development plan. There should be no hidden interests among them. Affected landowners acknowledge that the development plan is intended for public purpose while government agency that needs land should accommodate people's preference as long as it is reasonable.
- **Participation**  
Affected people need to be involved in each step of land acquisition process since they would be the key element of successful project. Trust should be built by listening perspectives from both parties.
- **Mediating system**  
During the process of delivering compensation, deliberation and negotiation among involved parties should be mediated by certain system which has been established and acknowledged. This system will help making critical decision as guidance for negotiation in case of difficulties in gaining a meeting point between government agency that needs land and affected people. Besides that, the system will ensure equal position for both parties in negotiation process and protect vulnerable parties to achieve fairness.

## Chapter 6 Policy Implications

This chapter will scrutinize type of compensation scheme either financial compensation or non-financial compensation which has more possibility to fulfil criteria of a fair and affordable compensation. From this point, land acquisition techniques that use better compensation scheme will be examined in regards to internal perspective and landowner's preferences. Furthermore, these findings will be reflected on the condition of several levels of policy. Meanwhile, readiness of regulations in Indonesia including new regulations that will take effect in 2015 for all kind of infrastructure development for public interest will also be explored.

### 6.1. Compensation Scheme

Based on analysis, there are four essential criteria that could be harnessed to reach a fair and affordable compensation scheme, namely comprehensive regulations, open system, participation, and mediating system. These four criteria are then used to examine financial and non-financial compensation scheme in general.

#### ***Financial compensation***

In terms of *regulations*, financial compensation has very long history in the application of land acquisition for development. Most countries in the world would utilize this scheme as the main form of compensation to be offered to affected people in the way of common "trading". In this point of view, compensation is done after affected people have been given sum of money to compensate their grievance. The future condition of affected people depends on their ability to manage their money.

Land has its own characteristic and values inherent to its holders. It is hardly possible for both involved parties to valuing the land in an open system. *Openness* will lead to unexpected land price needed for compensation since affected people would losing their inherent values to the land after eviction such as opportunities, neighbourhood, accessibilities, and facilities. To compensate these values in the form of money is not an easy task to do in an open system.

*Participation* has close relation with openness. In financial compensation, participation is only intended to gain understanding of the importance of development plan to society. Affected people are expected to participate for the development within deliberation and counselling. Willingness of affected people to accept the development plan is the key factor to implement the project.

The use of mediating system in financial compensation scheme is very important. Negotiation between parties that need land and affected landowners should be conducted through *mediation*. This is certainly aimed to avoid unfair negotiation process in order to protect both involved parties. Mediating system can be implemented in the form of regulations, procedures, or independent agencies which are acceptable by both parties. Land price and inherent value is still a problem to form mediations.

#### ***Non-financial compensation***

*Comprehensiveness* is an essential element attached to non-financial compensation. This scheme needs availability of rules, regulations, and procedures that would cover subsequent steps after affected landowners accept the scheme. Involvement of other related sectors is not only at the time of planning but also in the way of affected people may benefit from the compensation. The

benefit of non-financial compensation depends on the scheme chosen by the people. Each scheme has its own mechanism therefore it will be more complicated procedures.

Possibility of reaching land value and its inherent related to landowners' perspective is considerably wide. *Openness* of both parties to see their affordability and preference could be fostered by several alternative options. Attachment to the land could be delivered by land lease or shareholding. The presence of facilities, neighbourhood, and accessibilities could be supported by land replacement or resettlement. In this way, the meeting point is easier to be achieved in regards to inherent values of the land.

In non-financial compensation, affected people are involved in realizing the scheme. *Participation* is not only intended to accept forms of compensation but also related parties should understand advantages and disadvantages of the chosen scheme. Indeed, without any participation of affected people, non-financial scheme is hardly realized since participation of affected people is intended for their own goodness.

The key factor of successful in delivering non-financial compensation is effective *mediations*. Since the scope of interests involved in this scheme mostly related to government's authority, it is compulsory to put government as the driver force to implement non-financial compensation. Several authorities are possessed by government such as land management policy, land-use planning, housing policy, financial policy, and infrastructure provision. Integrated planning and implementation of non-financial compensation by government will ensure willingness of affected people.

### **Comparison**

By accommodating the four criteria, financial and non-financial compensation scheme can be compared through several points on each criterion. Each point could be positive or negative depending on its contribution towards a fair and affordable compensation scheme. Positive value means that the points give significant support to meet equilibrium while negative value refers to unbalanced condition.

Table 6.1 Comparison of Compensation Scheme

<b>Criteria</b>	<b>Financial compensation</b>	<b>Non-financial compensation</b>
Mediation	<i>Independent Agency (+)</i> <i>Guidance for negotiation (+)</i> <i>Land price and inherent values (-)</i>	<i>Strong government roles (+)</i> <i>Willingness of affected people (+)</i>
Openness	<i>Land price and inherent values (-)</i>	<i>Provide alternative options (+)</i> <i>Towards meeting point (+)</i>
Regulation	<i>Market-like scheme (+)</i> <i>Less comprehensive (-)</i>	<i>Comprehensive (+)</i> <i>Complicated (-)</i>
Participation	<i>Participate-to-accept (-)</i>	<i>Participate-to-choose (+)</i>

This comparison indicates non-financial compensation has more positive values to achieve criteria for a fair and affordable compensation scheme. The only negative value that would possible to occur is in the making of comprehensive regulations. The regulations should be integrated with other public policy sectors. To both compensation schemes, mediation is very important criterion since it would foster possibility to achieve equilibrium. Meanwhile, openness

may hamper financial compensation to meet the equilibrium since it would have difficulties to assess inherent values.

## 6.2. Land Acquisition Techniques

Criteria towards a fair and affordability compensation scheme show that financial compensation has several weaknesses in delivering equilibrium between both parties whereas non-financial compensation give more promising mechanisms in bringing the balance. Even though fairness may be achieved through financial compensation by compensating all inherent values in the form of money, affordability of government agencies that need land will become increasingly out of reach. Meanwhile, non-financial compensation tries to transform inherent values related to the land into alternative forms either similar or different that would enhance willingness of affected people.

Even though non-financial compensation seems closer towards the balance, each type of non-financial compensation has its own problem in the field. In case of Desari toll road development, during interviews several issues related to non-financial compensation appear. Feedbacks from field officers and officials regarding affordability issues and weaknesses of non-financial compensation are very essential as an internal input. On the other hand, various responses are also conveyed by landowners and occupants of the land related to fairness issues and positive expectations from non-financial compensation scheme. In this research, there are merely three kind of non-financial compensation questions prepared during interviews which are land replacement, resettlement or relocation, and shareholding. The first two non-financial compensation schemes are stipulated in prevailing regulations whereas the last one is specified in new regulations.

Table 6.2 Different Issues on Land Acquisition Techniques

<b>Compensation scheme</b>	<b>Internal perspective</b>	<b>Landowners' preferences</b>
Land replacement	<i>Lack of budget (-)</i> <i>Weak regulations (-)</i> <i>Difficulty to find land (-)</i> <i>Government asset (+)</i>	<i>Time for building (-)</i> <i>Assurance from government (+)</i> <i>Developed area (+)</i> <i>Participation (+)</i> <i>Nearby area (+)</i> <i>All class (+)</i>
Resettlement or relocation	<i>Lack of budget (-)</i> <i>Weak regulations (-)</i> <i>Difficulty to find land (-)</i> <i>Government asset (+)</i>	<i>Assurance from government (+)</i> <i>Developed area (+)</i> <i>Participation (+)</i> <i>Nearby area (+)</i> <i>All class (+)</i>
Shareholding	<i>Weak regulations (-)</i>	<i>Less understanding (-)</i> <i>Assurance from government (+)</i> <i>Limited class (-)</i>

Of the three land acquisition techniques, resettlement or relocation is the most prominent land acquisition technique considered by landowners. They tend to choose resettlement or relocation by considering assurance from government in terms of sustainability and quality of

their living condition. Strong government support in this case is the key factor to successful compensation scheme. On the other hand, negative value contributed by internal perspective indicates that non-financial compensation is something new or rarely implemented in the field although regulations have implied such things. Their only experience is managing government asset so as to avoid loss of asset after process of eviction.

### **6.3. Implication for Indonesian Policy**

Findings in Desari toll road development regarding type of compensation scheme and land acquisition techniques that would lead to a fair and affordable compensation can be an input to urban land policy in Indonesia. Besides that, in accordance to analysis, several inhibiting factors containing some aspects should be taken into account and criteria for a fair and affordable compensation might help Indonesian policy in dealing with efficiency and equity issues.

Policy implications should affect multilevel governance to ensure sufficient support from top level of governance and it can be done effectively by the lower level. Looibach & Rotmans (2010) suggest four-staged governance activities to examine actor behaviour in different levels of governance namely strategic level, tactical level, operational level, and reflexive. Depart from this, policy implications due to research findings and analysis will be divided into these levels.

#### **6.3.1. Strategic level**

According to Presidential Decree No.36/2005 and Presidential Decree No.65/2006, principles used in managing land acquisition in Indonesia consists of *transparency*, *fast process*, *upholding land rights*, and *legal certainty*. These principles contain similar notions to four criteria of a fair and affordable compensation scheme. *Transparency* can be related to openness in which process of land acquisition should be acknowledged by involved parties and all information regarding each plan should be shared publicly. This circumstance simultaneously endorses participation of involved parties within certain level. In terms of comprehensive regulations, two principles in land acquisition, *upholding land rights* and *legal certainty*, indicate the importance of this notion. This means that each step of land acquisition should be conducted according to rule of the law and rights of landowners on their land should be respected.

Meanwhile, *mediation* as one of the criteria for a fair balance implies strong government roles to make coordination among different planning sectors that would lead to sustainability. Prevailing regulations regarding land acquisition for infrastructure development of public interest hardly cooperate or engage with other planning sectors due to different level of legal hierarchy therefore scope and effect of the regulation are limited. Recently, new regulations regarding land acquisition has emerged with higher legal hierarchy that would potentially make strong mediating system.

#### **6.3.2. Tactical level**

This level is intended to pursue equitable land acquisition process by considering affordability of government agencies that need land. Tactical level consists of rule of the law, regulations, and procedures to implement land acquisition process. This level acts as a bridge between strategic level and operational level. It is important to accommodate the four criteria of a fair balance and make adjustments to anticipate inhibiting factors in the whole process of land acquisition. Besides that, findings in the field can be an input to make better urban land policy in the future. New regulations consisting of Act No.2/2012, Presidential Decree No.71/2012, and implementing regulation Head of BPN Decree No.5/2012 have accommodated several important issues regarding policy implications.



In terms of *comprehensive regulations*, the new rules have provided technical and implementing guidelines for non-financial compensation schemes such as relocation, resettlement, and shareholding. The guidelines should be supported by firm regulation on legal standing of land rights including non-certificated land. In addition, strict timeframe would help delivering the project at the schedule. Even though NJOP is set periodically for each municipality, there should be a mechanism to make reasonable value towards market price. In broader sense, landuse planning and zoning system should be enhanced to foster the need of available land for relocation or resettlement.

### 6.3.3. Operational level

In operational level, policy plan in regards to rule of the law and regulations need to be analyzed, especially possibility of policy discretion in the field. Policy implication in this level can be explained in several points.

#### ***Land acquisition process***

In new regulations, responsible actor for site determination is no longer Mayor or Governor himself but Provincial Government together with government agency that needs land. In addition, affected people are already invited to join public consultation at the beginning of the process. This activity shows that strong *mediating system* to facilitate government agency that needs land and affected people has been put into consideration. In this case, both parties will get better understanding during site determination in which affected people has been given *equal choice* before accepting the development plan. This circumstance shows that *openness* and higher level of *participation* are greatly endorsed. Site determination should be supported by well-prepared initial data including NJOP, map of land zone, and market land price. In case of disapproval, government should prepare alternative sites.

Fundamental changes occur in several main points of land acquisition which are in the way of upholding land rights, avoiding speculation, and fostering public interests. New regulations give broader authority to Appraisal Team in order to make valuation of all parts of the property. This condition will ensure appraisal results are uniformly delivered. Finding shows that land valuation based on zoning system has been considered differently among affected people. By making land valuation based on parcels, people resistant to their land valuation might be reduced.

Availability of making objection from Governor to Supreme Court shows that new regulations provide *comprehensiveness* to accommodate affected people in achieving fairness. Besides that, new regulations ensure affected landowners could make land transaction to Land Agency. This *pre-emption* rights as part of indirect method of land acquisition could ease both parties in the way that affected people can sell their land when they need and Land Agency acquire the land for the development. Apart from it, certainty of the process occurs on deliberation which is only 30 days and affected people could deal with District court to find justice.

Table 6.3 Comparison: Land Acquisition Process

	<b>Prevailing regulations</b>	<b>New regulations</b>
<b>Planning</b>		
	Set by government agency that needs land	Set by government agency that needs land

<b>Site determination</b>		
	Stipulated by Mayor or Governor	Stipulated by Provincial government and government agencies that need land
	Forming of P2T	<ul style="list-style-type: none"> <li>▪ Initial data</li> <li>▪ Public consultation</li> </ul>
	Land transaction is stipulated by Mayor (land freezing)	Land transaction can be conducted between landowners and Land Agency
<b>Implementation</b>		
	Conducted by P2T	Conducted by Land Agency
	<ul style="list-style-type: none"> <li>▪ Socialization</li> <li>▪ Inventory</li> <li>▪ Land valuation</li> <li>▪ Deliberation</li> <li>▪ Payment of compensation</li> <li>▪ Consignment of compensation</li> <li>▪ Transfer of rights</li> </ul>	<ul style="list-style-type: none"> <li>▪ Inventory</li> <li>▪ Land valuation</li> <li>▪ Deliberation</li> <li>▪ Payment of compensation</li> <li>▪ Consignment of compensation</li> <li>▪ Transfer of rights</li> </ul>
<b>Land valuation</b>		
	<ul style="list-style-type: none"> <li>▪ Done by Appraisal Team (land) and Government agencies (building, plant)</li> <li>▪ Land valuation based on land zone</li> </ul>	<ul style="list-style-type: none"> <li>▪ Done by Appraisal Team (land, building, plant)</li> <li>▪ Land valuation based on parcels</li> </ul>
<b>Deliberation</b>		
	<ul style="list-style-type: none"> <li>▪ 120 days, longer process</li> </ul>	<ul style="list-style-type: none"> <li>▪ 30 days, shorter process</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Objection only on amount of compensation through Mayor or Governor</li> </ul>	<ul style="list-style-type: none"> <li>▪ Objection on site plan through Governor, Administrative court, and Supreme court</li> <li>▪ Objection on amount of compensation through District court, and Supreme court</li> </ul>
	<ul style="list-style-type: none"> <li>▪ Mayor issues permission for physical development</li> <li>▪ Consignment of compensation</li> </ul>	<ul style="list-style-type: none"> <li>▪ District court revokes land rights</li> <li>▪ Consignment of compensation</li> </ul>

### ***Non-financial compensation***

Even though prevailing regulations have explicitly mentioned non-financial compensation which are land replacement, resettlement, and shareholding; lack of related mechanism hamper the implementation of this scheme. The new regulations show *comprehensiveness* in dealing with non-financial compensation. In terms of land replacement and resettlement, site determination and plan implies *openness* and high level of *participation*. On the other hand, this would need much time to find better location according both parties. *Mediating* system is considerably required to deal with inherent values of the land. In this case, strong government roles in providing alternative sites with development support in accordance to landuse planning are very crucial to ease the proponent and affected people find suitable location. It is related to research

finding showing affected people expectation to choose relocation or resettlement with the terms that government can assure the new location has at least the same living condition. Government should examine suitable site for relocation or resettlement. In dense populated area, Right Conversion Method (RCM) can be used as a solution.

Table 6.4 Comparison: Non-Financial Compensation

	<b>Prevailing regulations</b>	<b>New regulations</b>
<b>Land Replacement</b>		
	<ul style="list-style-type: none"> <li>▪ Stated by landowners and agreed by government agency that needs land</li> </ul>	<ul style="list-style-type: none"> <li>▪ Conducted by government agency that needs land</li> <li>▪ Site location depends on deliberation</li> <li>▪ The land value equals to amount of compensation</li> <li>▪ Within 6 months after determination of compensation</li> </ul>
<b>Resettlement</b>		
	<ul style="list-style-type: none"> <li>▪ Stated by landowners and agreed by government agency that needs land</li> </ul>	<ul style="list-style-type: none"> <li>▪ Conducted by government agency that needs land</li> <li>▪ Site location depends on deliberation</li> <li>▪ The land value equals to amount of compensation</li> <li>▪ Within 1 year after determination of compensation</li> </ul>
<b>Shareholding</b>		
	No implementing regulations	<ul style="list-style-type: none"> <li>▪ Agreement between affected people and state-owned company</li> <li>▪ Within 3 months after determination of compensation</li> </ul>

***Timeframe***

In new regulations, certainty of the process becomes an important matter to ensure the implementation of land acquisition. Each process in every stage has been assigned specific timeframe. This is certainly intended to avoid delays and served as assurance from government to realize the infrastructure development for public interest. By making strict schedule, the process of land acquisition can be noted through the length of current days used. According to findings, certainty of the process is endorsed by affected people and supported as principle in the strategic level. Besides that, one of the inhibiting factors is less certainty in time scheduling. By making strict schedule, involved parties could benefit from land acquisition mechanism. To support this, the use of system information management to monitor the schedule and place dedicated field officers would give significant advantage for the project.

Table 6.5 Comparison: Timeframe

	<b>Prevailing regulations</b>	<b>New regulations</b>
<b>Certainty of process (in working days)</b>		
Forming of Site Determination Team	-	10
Inform development plan	-	20
Invitation for socialization	-	3
Initial data	-	30
Invitation for public consultation	-	3
Public consultation	-	60
Second public consultation	-	30
Examine objection of public consultation	-	14
Implementation of site determination	-	3
Site determination (SP2LP)	-	14
Objection to Administrative court (SP2LP)	-	30
Decision from Administrative court (SP2LP)	-	30
Cassation to Supreme court (SP2LP)	-	14
Decision from Supreme court (SP2LP)	-	30
Inform inventory result	7	14
Objection on inventory result	-	14
Verification of inventory result	-	14
Forming of Appraisal Team	-	30
Property valuation	-	30
Invitation for deliberation (land value)	-	5
Deliberation (land value)	120	30
Objection to Mayor or Governor / District court (land value)	14	14
Decision from Mayor or Governor / District court (land value)	30	30
Cassation to Supreme court (land value)	-	14
Decision from Supreme court (land value)	-	30
Payment of compensation	-	7
<b>Total</b>	<b>171</b>	<b>523</b>

#### 6.3.4. Reflexive

This activity should be done by experienced field officers to examine progress of land acquisition in accordance with given schedule and timeframe. According to new regulations, monitoring and evaluation will be conducted by BPN (National Land Agency) depending on their jurisdiction area. These activities include technical assistance periodically given to field officers. Apart from examining the progress, authorized officers could also propose appropriate land acquisition technique and compensation scheme according to their experience and characteristic of affected people.

Several important issues need to be highlighted in regards to proposed policy implications. First of all, planning proposal is still delivered by government agencies that need land. In this case, quality of estimation costs depends on capacity of each agency to generate reasonable

calculation. Besides that, good Spatial Plans (RTRW) is needed in each provincial government to provide better analysis of site determination. Since site plan could be changed, alternative routes or sites should be prepared. Secondly, uniformity of Appraisal Team for the whole project minimizes unexpected differences among regions impassable by the development plan. Point to consider is determination of property value for each parcel of land. This assessment should be made transparent to avoid discontent of other parties because Appraisal Team becomes the determinant of fair balance compensation. Thirdly, decision to open possibility to do land transaction with Land Agency may help people ease their burden in urgent condition. Finally, certainty of the process benefits landowners and government agencies that need land. Even though total duration of all steps look longer, it is important to provide assurance for the completion of certain project.

## **Chapter 7 Conclusion**

### **7.1. Introduction**

Role of government to provide public infrastructure is not an easy task to be done especially when dealing with land. In urban areas, many parcels of land may be acquired to support development process. Government may use its eminent domain power to provide land for the development. This land policy should consider affected people's interest to avoid frictions among stakeholders and maintain public confidence in law. Meanwhile, public infrastructure can be categorized into social overhead capital and economic overhead capital. The last type relates to productive activities and positive spill-over.

Government may use its power to attain land from private owners to satisfy public infrastructure consumption. These powers in the form of strict rules and procedures commonly produced by considering legal, social, and economic aspect within the region. Each country implements its own techniques to acquire land from private owners. There are many different procedures and mechanism of land acquisition techniques in the world such as compulsory land acquisition, zoning regulation, land use planning, and voluntary acquisition. The implementation of these techniques needs to be well-examined to pursue a fair balance especially high economic value infrastructure development.

Toll road development is one of high economic value infrastructures that contribute revenue for government and business entities. Besides that, benefits to society are various especially pertaining to transportation of goods and services and changing land value and spatial patterns. On the other hand, toll road has limited purpose in which it only allows certain kind of vehicles to pass. People cannot use it for walk, talk, recreation or play.

In Indonesia, toll road development also brings significant benefit to government, private companies, and other beneficiaries. In many projects, affected people often request for more compensation regarding their land and building price while the others would not move due to strong community ties, sense of closeness to the land both economically and emotionally. These circumstances have a considerable impact to the highway development. There should be suitable land acquisition techniques which can fulfil the needs of landowners while at the same time these mechanisms should not burden the budget as well as generate feasible outcomes for government and private companies.

Several rules and regulations have been issued to arrange land acquisition process to be more fair and eligible. Presidential Decree No. 36/2005 implies fast and transparent mechanisms to conduct land acquisition. Subsequently, Presidential Decree No. 65/2006 amends previous regulation to gain more legal certainty yet considering occupant land rights. Moreover, alternative forms of compensation are guaranteed by the rule of the law such as land, relocation, and shareholding. The last option is added on Act No. 2/2012.

### **7.2. Research**

Actually, principles adopted in the new regulations are also upholding the land rights as proclaimed by previous regulations in terms of fairness. This principle should be executed in any kind of public investment including high economic value infrastructure development. Compensations given to public capital investment within SOC may not be the same with EOC's since it would contribute considerable economic advantages. Indifference of examining this issue

would lead to equity problems. Therefore, the main question of this research is “*What kind of land acquisition techniques that potentially could provide fair and affordable compensation scheme in high economic value infrastructure development and in what ways they could achieve such conditions.*” Subsequently, several research objectives have to be answered which are land acquisition process used in high economic value infrastructure development, equity issues in regards to high economic infrastructure development, criteria for a fair and affordable compensation scheme, land acquisition techniques that support the criteria, and policy implication for land acquisition in Indonesia.

There are methods and procedures which have to be conducted to answer each research objective. Data can be gathered from secondary sources and primary survey. Primary data was gathered by observation and interviewing key stakeholders which are affected landowners, P2T (Land Acquisition Committee), TPT (Land Procurement Team), land agency’s officers, NGO, and academics. Affected landowners are mostly represented by community in each *Kelurahan* which are Forkom Desari in Pangkalan Jati Baru, Cultivators in Gandul, and Kempa’s descendants in Krukut. Meanwhile, secondary sources can be gathered from literatures, the internet, and visiting relevant institutional actors. Content analysis will be conducted to explore trend and practice of land acquisition techniques. Narrative and coding analysis are used to obtain criteria of a fair balance compensation scheme from internal perspective, landholders’ preferences and external perspective.

### **7.3. Findings**

Land acquisition process in high economic infrastructure development is explored from the case study area. According to implementing regulations, land acquisition process can be divided into three main stages which are planning, site determination, and implementation. Planning proposal is needed to be prepared by government agencies that need land for building infrastructure for public interest. Site determination is pronounced by Mayor or Governor as a permit to conduct the development. Implementation stage consists of counselling, identification and inventory, land valuation, deliberation, payment of compensation, consignment of compensation, and transfer of rights.

Interviews with the communities were conducted through open discussion, friendly conversation, and emphasis on certain topics which have been prepared earlier, although possibility of other unexpected matters would rise. During interviews, several equity issues found as a combination of their desires, expectations, and needs within land acquisition process, namely:

- Certainty of the process  
Land acquisition process in Desari toll road development occurs in a lengthy period that would adverse affected landowners economically and psychologically.
- Equal position in negotiation process  
In particular, some communities request that any affected people who want to negotiate regarding amount of compensation should be accompanied by representative of communities to minimize unfair negotiation process, especially for marginal people.
- Re-evaluation of measured land  
The result of measured land size sometimes does not satisfy affected landowners. They want delivery of measurement data should be examined carefully.

- Reasonable market price  
The land price should be minimally the same with market price by which people can afford to buy land and build house within the area nearby.
- More transparent in zoning system  
Communities want the mechanism to implement zoning system should be more transparent and reasonable.
- Protecting vulnerable households  
Occupants of state-owned company hope that there would be a solution for them since they cannot afford to build house although the only compensation for building will be given by TPT through the landowners.
- Considering resettlement  
Of three possible forms of non-financial scheme, relocation or resettlement is regarded as the most acceptable alternative option for them.

Inhibiting factors reveal different perspectives regarding several issues in the whole process of toll road development between landholders, officers and other involved parties. In addition, particular shortcomings that still need to be improved are exposed. Finding of these factors in the field can be elaborated as follow:

- Different views on the project  
Even though land acquisition for toll road development is considered as procedural fairness in which it has been stated in the regulations, community thinks that they might be granted to receive disproportionate benefit.
- Unexpected field condition  
Planning of toll road development which is less comprehensive especially in estimating possibility of properties being evicted for the development is not well-covered.
- Different views on market price  
The existence of mushrooming luxury housing estate along the site plan affects society's view on the value of their property. In fact, fantastic prices of related housing are not the real value yet they are added with opportunity value due to facilities supporting the housing. Meanwhile, Appraisal Team tends to calculate properties according to the real value.
- Less certainty of time scheduling  
Firmness and certainty in the process of land acquisition should be made. Each step needs specific timeframe to avoid delays.
- Lack of dedicated officers  
It is common that tasks for conducting land acquisition process are held by officers from certain government agencies. Actually, workloads of each officer especially in urban areas are already high. By appointing them, two responsibilities should be borne at once therefore ability to dedicate on one task cannot be achieved perfectly.
- Lack of alternative options  
Options are needed to set wider opportunity of affected people to meet their expectation and need. Hay (1995) captures this notion as *equal choice* in which equity can be achieved through distribution results from "*informed individuals choosing over equal choice sets*".
- Weak implementing regulations  
There should be firm regulation to provide safety for field officers in conducting land acquisition process including non-certificated land issue and non-financial compensation scheme.



Criteria for a fair and affordable compensation scheme are formed by accommodating equity issues from landowners' preferences, affordability issues relate to internal perspective, and it is guided by external perspective from expert and NGO. Several criteria for a fair balance compensation scheme are:

- Comprehensive regulations  
Regulations and rule of the law should cover complete procedure and mechanism related to land acquisition process.
- Open system  
All involved parties should aware their rights and obligations as well as advantages and disadvantages of the development plan.
- Participation  
Affected people need to be involved in each step of land acquisition process since they would be the key element of successful project.
- Mediating system  
During the process of delivering compensation, deliberation and negotiation among involved parties should be mediated by certain system which has been established and acknowledged.

By these criteria, non-financial compensation has more capability to achieve a fair and affordable compensation scheme instead of financial compensation. In this research, three type of non-financial compensation are explored which are land replacement, resettlement, and shareholding. Of the three land acquisition techniques, resettlement or relocation is the most prominent land acquisition technique considered by landowners.

Policy implications are explained into four-staged governance activities to examine actor behaviour in different levels of governance namely strategic level, tactical level, operational level, and reflexive. By considering inhibiting factors and criteria for a fair balance, implication on level of governance can be described as follow:

- Strategic level  
Principles used in managing land acquisition in Indonesia consist of *transparency, fast process, upholding land rights, and legal certainty*. These principles are inline with criteria for fair balance compensation. Strong mediation system could be achieved by new regulations.
- Tactical level  
In terms of *comprehensive regulations*, the new rules have provided technical and implementing guidelines for non-financial compensation schemes such as relocation, resettlement, and shareholding. The guidelines should be supported by firm regulation on legal standing of land rights including non-certificated land. In addition, strict timeframe in the regulations would help delivering the project at the schedule. Even though NJOP (Selling Point of Tax Object) is set periodically for each municipality, there should be a mechanism to make reasonable value towards market price. In broader sense, landuse planning and zoning system should be enhanced to foster the need of available land for relocation or resettlement.
- Operational level  
In operational level, policy plan in regards to rule of the law and regulations need to be analyzed, especially possibility of policy discretion in the field. Policy implication in this level can be explained in land acquisition process, endorse non-financial compensation, and make strict timeframe.

- **Reflexive**  
Monitoring and evaluation should be conducted depending on each jurisdiction area. These activities include technical assistance periodically given to field officers. Apart from examining the progress, authorized officers could also propose appropriate land acquisition technique and compensation scheme according to their experience and characteristic of affected people.

Several important issues need to be highlighted in regards to policy implications. First of all, planning proposal is still delivered by government agencies that need land. Secondly, uniformity of Appraisal Team for the whole project minimizes unexpected differences among regions impassable by the development plan. Thirdly, decision to open possibility to do land transaction with Land Agency may help people ease their burden in urgent condition. Finally, certainty of the process benefits landowners and government agencies that need land.

#### **7.4. Reflection**

This research still needs more improvement in some points due to limited time and condition in the field. It is essential to do research in several case study areas to make comparison among them. Large and various sources of data could deliver different preferences and characteristics of people that would help in making comprehensive data collection. Besides that, it is important to conduct quantitative data collection to support findings obtained from interviews and observation. The research should also cover more various inputs from different experts to get strong data analysis. The use of qualitative data collection tends to be subjective depending on the interviewees.

Apart from the weaknesses, there are some strong points regarding the research in terms of interview data, characteristic of people, and importance of the project. Data gathered from interviews of affected people during the process of land acquisition. In this case, their expectation, need, and preference are still fresh. Interestingly, each community resides in dispersed location and each location experiences different stage of land acquisition process. Meanwhile, various characteristic of people can be found during interviews such as low, middle, and high income inhabitants as well as urban and semi-urban community. These circumstances enrich the quality of data obtained from the field research. Apart from it, Desari toll road development is an important project to provide alternative road especially for commuters living in Depok municipality and working in Jakarta.

This research contributes several important notions on theoretical framework in general and especially some empirical findings. In term of general abstraction, criteria for a fair and affordable compensation scheme can be put as preliminary stepping stone to find more specific criteria depending on the context. Moreover, based on these criteria non-financial compensation scheme has more possibility to achieve equilibrium than financial compensation scheme, especially when dealing with inherent values of the land. In terms of empirical issues, there are three main factors needing more attention in conducting land acquisition process. First of all, dedicated field officers for the project could ease the workload in conducting the tasks. Secondly, comprehensive guidance could help officers to elaborate decision in the field and provide possibilities for affected people to have more options especially related to compensation scheme. Lastly, strict timeframe and evaluation could benefit involved parties pertaining to certainty of the project.

Future research regarding this issue could be conducted in several main corridors namely enhance criteria for a fair balance compensation scheme; explore the implementation of non-

financial compensation in high economic infrastructure development; and inhabitants' behaviour towards after resettlement. Criteria for a fair balance compensation scheme need more inputs from different experts such as urban development, law, and public policy. Besides that, non-financial compensation can be new model in toll road development. Research regarding the implementation of this model would be very interesting. Apart from these, there is still a gap to explore the behaviour of local inhabitants living in new settlement due to certain projects. It is important to know their experience before and after resettlement regarding inherent values of their land.

## Reference

- ADB. (2007). *Capacity Building for Resettlement Risk Management: Thematic Reports PRC*. Asian Development Bank.
- ADB. (2007). *Compensation and Valuation in Resettlement: Cambodia, People's Republic of China, and India*. Asian Development Bank.
- Alias, A., & Daud, M. N. (2007). Payment of Adequate Compensation for Land Acquisition in Malaysia. *Pacific Rim Property Research Journal* , 12 (3), 326-349.
- Azuela, A. (2009). The Use of Eminent Domain in São Paulo, Bogotá, and Mexico City. In L. I. Policy, *Property Rights and Land Policies* (p. 181). Massachusetts: Lincoln Institute of Land Policy.
- Belej, M., & Walacik, M. (2008). Land Acquisition for Public Purpose in Poland on Example of Public Roads Construction. *FIG Working Week 2008: Integrating Generations*. Stockholm: FIG.
- Bell, A., & Parchomovsky, G. (2007). Taking Compensation Private. *Stanford Law Review* , 59 (4), 871-906.
- Berechman, J., Ozmen, D., & Ozbay, K. (2006). Empirical analysis of transportation investment and economic development at state, county and municipality levels. *Transportation* , 33, 537–551.
- BPJT. (2011). *Goals and Benefit (in Bahasa)*. Retrieved February 2013, from Badan Pengatur Jalan Tol - Kementerian Pekerjaan Umum: <http://www.bpjt.net/main.php?stateid=jartol&parentid=4&pageid=8&strlang=id>
- BPJT. (2012, October). Toll Road Investment Opportunity in Indonesia.
- BPN RI. (2007). Perkaban No. 3 Year 2007 About Implementing Regulation of Presidential Decree No 36 Year 2005.
- Chan, N. (2003). Land Acquisition Compensation in China –Problems & Answers. *INTERNATIONAL REAL ESTATE REVIEW* , 6 (1), 136 - 152.
- CMNP. (2011). *CMNP Annual Report 2011*. Jakarta: PT Citra Marga Nusaphala Persada Tbk.
- CMNP. (2012). *CMNP Annual Report 2012*. Jakarta: PT Citra Marga Nusaphala Persada Tbk.
- Damen, J. (2004). Land banking in The Netherlands in the context of land consolidation. *Land Banking / Land Funds as an Instrument for Improved Land Management for CEEC and CIS*. Tonder: Danish Ministry of Agriculture, FAO.
- Dewberry, S. O., & Couture, D. (2004). *Land Development Handbook Second Edition: Planning, Engineering, and Surveying*. The McGraw-Hill Companies.
- Ding, C. (2007). Policy and Praxis of Land Acquisition in China. *Land Use Policy* , 24 (1), 1-13.
- Doebele, W. A. (1983). Concept of Urban Land Tenure. In H. B. Dunkerley, *Urban Land Policy Issues and Opportunities*. London: Oxford University Press.
- Eberts, R. W. (1990). Public Infrastructure and Regional Economic Development. (pp. 15-27). <http://clevelandfed.org/research/review>.

- FAO. (2008). *Compulsory acquisition of land and compensation*. Rome: Communication Division-FAO.
- Gaertner, W., & Schwettmann, L. (2007). Equity, Responsibility and the Cultural Dimension. *Economica* , 74 (296), 627-649.
- GLEFC. (2005). *Best Practice in Land Bank Operation*. Ohio: The Department of Economic Development, Cleveland State University.
- Gunasekera, K., Anderson, W., & Lakshmanan, T. (2008). Highway-Induced Development: Evidence from Sri Lanka. *World Development* , 36 (11), 2371–2389.
- Hansen, N. M. (1965). The Structure and Determinants of Local Public Investment Expenditures. *The Review of Economics and Statistics* , 47 (2), 150-162.
- Harun, I. B. (2010). Pembangunan Areal Perkotaan dengan Pendekatan Tanpa Menggusur: Penggunaan Right Conversion Method. In I. B. Harun, *Realita dan Visi ke Depan Perumahan dan Permukiman di Indonesi* (pp. 239-256). Bandung: ITB.
- Hay, A. M. (1995). Concepts of equity, fairness and justice in geographical studies. *Transactions of the Institute of British Geographers* , 20 (4), 500-508.
- Hobma, F., & Wijting, W. (2007). LAND-USE PLANNING AND THE RIGHT TO COMPENSATION IN THE NETHERLANDS. *Global Studies Law Review* , 6 (1), 1-25.
- Iacono, M., Levinson, D., Zhao, Z., & Lari, A. (2009). *Value Capture for Transportation Finance: Report to the Minnesota Legislature*. Minnesota: Center for Transportation Studies.
- Janssen-Jansen, L., Spaans, M., & Veen, M. v. (2008). *New instruments in spatial planning: An international perspective on non-financial compensation*. Amsterdam: IOS Press-Delft University Press.
- Kitay, M. G. (1985). *Land Acquisition in Developing Countries: Policies and Procedures of the Public Sector*. Boston: Lincoln Institute of Land Policy.
- Konow, J. (2003). Which Is the Fairest One of All? A Positive Analysis of Justice Theories. *Journal of Economic Literature* , 41 (4), 1188-1239.
- Larsson, G. (1997). Land Readjustment: A Tool for Urban Development. *HABITAT INTL* , 141-152.
- Lehavi, A., & Licht, A. N. (2007). Eminent Domain, Inc. *Columbia Law Review* , 107 (7), 1704-1748.
- Levainen, K. I., & Altes, W. K. (2002). Land Development Contracts - A Comparative Study in Finland and in the Netherlands. *FIG XXII International Congress*. Washington DC: FIG.
- Lichfield, N. (1980). Towards a Comprehension of Land Policy. In O. H. Koenigsberger, & S. Groak, *A Review of Land Policies* (pp. 379-395). Oxford: Pergamon Press Ltd.
- Loorbach, D., & Rotmans, J. (2010). The practice of transition management: Examples and lessons from four distinct cases. *Futures* , 42: 237–246.
- Lucy, W. (1981). Equity and Planning For Local Services. *Journal of the American Planning Association* , 47 (4), 447-457.

- Ministry of Public Works. (2006). Permen No. 11/PRT/M/2006 about Authority and Task for Toll Road Operator.
- Neuman, W. L. (2006). *Social Research Methods: Qualitative and Quantitative Approaches* (6 ed.). Pearson Education, Inc.
- Niemann, P., & Shapiro, P. (2008). Efficiency and fairness: Compensation for takings. *International Review of Law and Economics* , 28, 157–165.
- Nurfitriani, R. (2011). *Analysis of Factors Affecting the Development of Toll Roads in Indonesia (in Bahasa)*. Bogor: Institute Pertanian Bogor.
- OECD. (2006). Scaling Up and Improving Infrastructure for Poverty Reduction. In OECD, *Promoting Pro-Poor Growth Infrastructure* (p. 21). Paris: OECD Publishing.
- Oluwamotemi, D. K. (2010). Land Acquisition, Compensation And Resettlement In Developing Economies: Nigeria As A Case Study. *FIG Congress*. Sydney.
- Parkin, J., & Sharma, D. (1999). *Infrastructure Planning*. London: Thomas Telford Publishing.
- Prakoso, A. (2008). Exemption of Land Rights in the Development of the East Flood Canal (BKT) (in Bahasa). *Tesis Program Studi Perencanaan Wilayah dan Kota SAPPK-ITB* .
- Rainer, G. (1990). *Understanding Infrastructure - A Guide For Architects and Planners*. New York: Wiley.
- Slangen, L., & Polman, N. (2008). Land lease contracts: properties and the value of bundles of property rights. *NJAS* , 55 (4), 397-412.
- Syms, P. (2002). *Land, Development and Design*. Oxford: Blackwell Science Ltd.
- TEMPO.CO. (2013, June 19). *Tempo.co - METRO*. Retrieved 2013, from Tol Depok-Antasari Ditargetkan Selesai 2015: <http://www.tempo.co/read/news/2013/06/19/083489389/Tol-Depok-Antasari-Ditargetkan-Selesai-2015>
- The World Bank. (2011). *Compulsory Land Acquisition and Voluntary Land Conversion in Vietnam-The Conceptual Approach, Land Valuation, and Grievance Redress Mechanisms*. Ha Noi: The World Bank.
- Viitanen, K., & Kakulu, I. (2009). Global Concerns in Compulsory Purchase and Compensation Processes. *International Federation of Surveyors*. Article of The Month - February 2009.
- Viitanen, K., Vo, D. H., Plimmer, F., & Wallace, J. (2010). *Hanoi Declaration: Land Acquisition in Emerging Economies*. Copenhagen: The International Federation of Surveyors (FIG).
- Willcox, D. L. (1980). Urban Land Policy: the "U" in Urban is for Unique. In O. H. Koenigsberger, & S. Groak, *A Review of Land Policy* (pp. 399-418). Oxford: Pergamon Press Ltd.
- World Bank. (2010, May 31). *Tonga: Environmental and Social Screening and Assessment Framework*. Retrieved May 2012, from [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/10/03/000356161\\_20101004000014/Rendered/INDEX/E25540P12059501C10EAP1ESSAF1P120595.txt](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/10/03/000356161_20101004000014/Rendered/INDEX/E25540P12059501C10EAP1ESSAF1P120595.txt)

- Yomralioglu, T., Uzun, B., & Nisanci, R. (2008). Land valuation issues of expropriation applications in Turkey. In FAO, *Land Reform: Land Settlement and Cooperatives 2008* (pp. 83-90). FAO.
- Young, S. P. (2009). *Reflections on Rawls: An Assessment of His Legacy*. Ashgate Publishing, Ltd.
- Zevenbergen, J., Frank, A., & Stubkjær, E. (2007). *Real property transactions: Procedures, transaction costs and models*. Amsterdam: COST Office.
- Zhou, Q. (2005, December 17). The evolution of efficiency principle: from utilitarianism to wealth maximization.

## Appendix

### Appendix 1 Guidelines for Data Collection

Elements	Guidelines
<b>Strategic</b>	
National policy	<ul style="list-style-type: none"> <li>▪ Does national policy contain land acquisition?</li> <li>▪ Does it integrate with other land policy?</li> </ul>
Policy formulation	<ul style="list-style-type: none"> <li>▪ Does it follow any law?</li> <li>▪ What approach is adopted, top-down or bottom-up?</li> <li>▪ Does the approach fit the actual ground situation?</li> <li>▪ Was the representative number of stakeholders present during policy formulation?</li> </ul>
Fairness	<ul style="list-style-type: none"> <li>▪ How do the policies address the equity in social-economic terms?</li> <li>▪ Does it maintain balance in the society?</li> <li>▪ Any differences compensation between high economic value infrastructure development and social overhead capital investment?</li> </ul>
Affordability	<ul style="list-style-type: none"> <li>▪ How do the policies address the efficiency for infrastructure development?</li> <li>▪ What drive the conception of efficiency?</li> </ul>
Non-Financial Instruments	<ul style="list-style-type: none"> <li>▪ Any non-financial compensation provided?</li> <li>▪ Is it possible to involve non-financial compensation in any condition?</li> </ul>
<b>Tactical</b>	
Articulating strategy	<ul style="list-style-type: none"> <li>▪ Are the strategy well defined and formulated?</li> <li>▪ Any difficulties to meet strategic level requirements?</li> </ul>
Fairness	<ul style="list-style-type: none"> <li>▪ Does valuation adopt equity principles?</li> <li>▪ Do all properties could be compensated? If not what are the limitations?</li> </ul>
Affordability	<ul style="list-style-type: none"> <li>▪ What are the limits of such development could be called affordable?</li> <li>▪ How to measure efficiency towards properties' values? Government perspective or investor negotiated?</li> <li>▪ How to overcome unexpected property's value, if it is above the rate?</li> </ul>
Non-Financial Instruments	<ul style="list-style-type: none"> <li>▪ Clear and comprehensive procedure in terms of non-financial compensation?</li> <li>▪ Does possibility of landowners to choose non-financial compensation facilitated?</li> <li>▪ To what extents this mechanism could give contribution?</li> </ul>
<b>Operational</b>	
Rule of law	<ul style="list-style-type: none"> <li>▪ Is the legal framework consistent and coherent?</li> </ul>
Transparency	<ul style="list-style-type: none"> <li>▪ Do all stakeholders are aware of the purpose of the development?</li> <li>▪ How accessibility to acquire information regarding the acquisition?</li> <li>▪ How well are the stakeholders informed about the benefits and facilities?</li> </ul>



Fairness	<ul style="list-style-type: none"> <li>▪ Does it treat all members of the society equally? In terms of compensation, participation, transparency.</li> <li>▪ Do the landowners receive same service standard independent of their political and economic status?</li> <li>▪ What is done to maintain equity?</li> <li>▪ How is valuation done, on what basis?</li> <li>▪ Are the landowners compensated adequately?</li> <li>▪ What are properties being compensated?</li> <li>▪ Is there any confirmation during valuation?</li> </ul>
Affordability	<ul style="list-style-type: none"> <li>▪ What conception of efficiency towards properties' values is used?</li> <li>▪ What perspective being harnessed to judge efficiency?</li> </ul>
Non-financial instruments	<ul style="list-style-type: none"> <li>▪ Does it provide non-financial compensation scheme?</li> <li>▪ To what extents non-financial compensation could be chosen?</li> </ul>
<b>Reflexive</b>	
Coherent	<ul style="list-style-type: none"> <li>▪ Lower level stage consistent with higher level stage expectation?</li> </ul>

## Appendix 2 Expected Question for Interviews

<b>Expert</b>	
1.	What are equity conceptions that fit with socio-political condition in Indonesia? In terms of fair compensation? What are aspects considered part of this conception.
2.	What are efficiency conceptions that could be harnessed by private toll companies? Is there any specific criteria?
3.	What do you think about non-financial compensation?
4.	Is there any good example for this mechanism? What kind of land acquisition technique used?
5.	To what extents non-financial compensation could yield win-win solution between landowners and investors?
6.	What are disadvantages and advantages of non-financial compensation scheme?
7.	How do you compare financial compensation and non-financial compensation?
8.	What can be the main reason for landowners to go for and against non-financial compensation?
9.	Do you think non-financial compensation could lead to more fair and eligible land acquisition?
10.	How to make it possible to approach fair balance compensation?
11.	Do you believe landowners' participation in the development could reduce conflict over land?
12.	Do you think non-financial compensation would be used more often in the future? If not what are the stumbling blocks?
13.	To what extents non-financial compensation could be implemented in Indonesia?
14.	What should be prepared by government to embrace non-financial compensation in the future?
<b>Landowners</b>	
1.	Is there any equity issue in valuation of your properties?

2.	What do you think fair compensation would be? What do you expect?
3.	Do you aware of property rights? What kind of property rights you have?
4.	Do you want to participate in the land acquisition process?
5.	What would you choose? Instant money or profit in other forms?
6.	Do you know non-financial compensation?
7.	What if your land is exchanged with other land in different location?
8.	Do you want still have rights to your land but receive yearly dividend each year?
9.	After understanding non-financial compensation, do you interested on this scheme?
10.	To what extents would you prefer non-financial compensation?
<b>Business Entity</b>	
1.	What do you expect from infrastructure development in Indonesia?
2.	How do you measure efficiency in terms of affordability to develop toll road?
3.	What is the biggest portion of investment for infrastructure development especially toll road development?
4.	What benefit that you could gain if land acquisition shares no problems at all?
5.	Is certainty for your investment much important than amount of capital itself?
6.	What do you know about non-financial compensation scheme? Do you agree about this?
7.	Is there possibility that landowners could provide their land for toll road development as an asset or share in the project?
8.	What do you think if government provide substitute land for affected landowners?
9.	Are there any difficulties that could occur to implement such mechanism?
10.	Does non-financial compensation better than financial compensation?
11.	To what extents non-financial compensation could provide a fair balance scheme?
12.	What should be prepared by government to pursue non-financial compensation?
<b>NGO</b>	
1.	What are the major issues in land acquisition process in Indonesia?
2.	Do you think equity problems still exist in any infrastructure development for public purpose?
3.	What kind of equity problems could occur in toll road development?
4.	What do you think about fair compensation would be?
5.	Do you know about non-financial compensation scheme?
6.	What if landowners still have their land but used for toll road development? They would receive dividend each year? What do you think about this?
7.	Do you think non-financial compensation could give better solution to land acquisition problems?
8.	To what extents non-financial compensation could be used in land acquisition process?

### Appendix 3 List of Interviewees

No.	Interviewee	Position	Location
1.	Ismet B. Harun	<ul style="list-style-type: none"> <li>▪ Lecturer of ITB (Bandung Institute of Technology)</li> <li>▪ Expert in Urban Development</li> </ul>	Bandung, West Java
2.	Dewi Kartika	<ul style="list-style-type: none"> <li>▪ Vice of General Secretary of KPA (Coalition for Agrarian Reform)</li> <li>▪ NGO in land management issues</li> </ul>	South Jakarta, DKI Jakarta
3.	Reinard	<ul style="list-style-type: none"> <li>▪ Head of Division Regulations in BPN</li> <li>▪ Policy representative</li> </ul>	Jakarta, DKI Jakarta
4.	Tusira	<ul style="list-style-type: none"> <li>▪ Head of Section Land Procurement in BPN</li> <li>▪ Policy representative</li> </ul>	Jakarta, DKI Jakarta
5.	Andi Sugandi	<ul style="list-style-type: none"> <li>▪ Head of Sub-Section Government Land in BPN (National Land Agency) of Depok Municipality</li> <li>▪ Secretary of P2T (Land Acquisition Committee)</li> </ul>	Depok, West Java
6.	Tito A Riyadi	<ul style="list-style-type: none"> <li>▪ Assistant Division Government Affairs of Depok Municipality</li> <li>▪ Member of P2T</li> </ul>	Depok, West Java
7.	Syahrial Ritonga	<ul style="list-style-type: none"> <li>▪ Officers of Ministry of Public Works</li> <li>▪ General Secretary of TPT (Land Procurement Team) Desari</li> </ul>	Jakarta, DKI Jakarta
8.	H. Ariffin Tjekiagus	<ul style="list-style-type: none"> <li>▪ Caretaker of Forkom Desari</li> <li>▪ Landowners and community in Pangkalan Jati</li> </ul>	Depok, West Java
9.	Salim et al.	<ul style="list-style-type: none"> <li>▪ Family member of Kempa's descendants</li> <li>▪ Landowners and community in Krukut</li> </ul>	Depok, West Java
10.	Basar et al.	<ul style="list-style-type: none"> <li>▪ Occupants of arable land</li> <li>▪ Landowners and community in Gandul</li> </ul>	Depok, West Java
11.	Interviewee 1	<ul style="list-style-type: none"> <li>▪ Head of <i>Kelurahan</i></li> <li>▪ Policy representative</li> </ul>	Depok, West Java
12.	Interviewee 2	<ul style="list-style-type: none"> <li>▪ Head of Neighbourhoods (RW)</li> <li>▪ Landowners</li> </ul>	Depok, West Java
13.	Interviewee 3	<ul style="list-style-type: none"> <li>▪ Head of Small Neighbourhoods (RT)</li> <li>▪ Landowners</li> </ul>	Depok, West Java
14.	Interviewee 4	<ul style="list-style-type: none"> <li>▪ Street vendor in Jalan Andara</li> <li>▪ Land occupier</li> </ul>	Depok, West Java