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COMPARING LAND EXPROPRIATION PROCEDURE BETWEEN INDONESIA AND TAIWAN

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Abstract

In order to increase Indonesia's economic growth through infrastructure development, recently the Government of Indonesia makes efforts to accelerate projects considered to be strategic and have great urgency to be realized within a short period of time. Related to rapid development in Indonesia, Ministry of Agrarian and Spatial Planning/ National Land Agency (NLA) has a very strategic role to provide Land for Development in Indonesia. But the problems such as lack of data in the Land Administration, the existence of individual controls over the forest, informal occupancy over the land, limited government budget, etc have resulted in an ineffective compensation process. On the other side, the government of Taiwan has been known as the government that has success story to provide Land for Taiwan's Development. This paper tries to compare procedure for land expropriation between Indonesia and Taiwan. The result of the paper tries to answer the question of how to accelerate the process of Land Expropriation in Indonesia based on the lesson learned from Taiwan.

Keywords: Land expropriation, success story, acceleration

A. Background and Context

Infrastructure development is a priority program in the era of President Joko Widodo (Current Indonesian President). The development requires land acquired through the mechanism of land acquisition. Based on the facts that the land acquisition process is a process that is not simple and time-consuming due to various factors including, the difficulty of determining the owner of the land rights that will receive compensation, the process of determining compensation is complicated, the threat of criminal penalties for carrying out tasks that create fear in exercising its authority as executor of land acquisition.

As Stated by (Chen, 2018) Taiwan is a developed country in Asia that has experience in carrying out the process of land acquisition for the construction of public facilities. Taiwan's success has been widely recognized by other countries. The financing strategy by involving the private sector to carry out development is one of the keys to success in the development process in the public interest. Other strategies related to the success of the land acquisition process will be explained in this paper with the hope of providing policy recommendations in the land acquisition process for development in Indonesia.

B. The institution Responsible for Land Affairs in Indonesia

The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (NLA) is an institution responsible for the policy formulation process and policy implementers in the field of land and land administration. This was stated in the Basic Agrarian Law (BAL) of 1965 (UUPA) as follows: The implementation of all matter related to land may be delegated to the

autonomous regions and customary law communities. The rights of controlled by state provide the authority:

1. to regulate and implement the appropriation, the utilization, the reservation and the cultivation of that earth, water and air space as mention above.
2. to determine and regulate the legal relations between persons, concerning the earth, water and air space.
3. to determine and regulate the legal relations between persons and legal acts, concerning the earth, water and air space

The institutional transformation of the land manager from the National Land Agency to the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (NLA) at the Joko Widodo era, has made the task and authority even greater, to carry President Joko Widodo's vision and mission of food sovereignty and economic independence, which will be achieved by prioritizing agrarian reform programs, land acquisition and asset legalization.

The National Land Agency (NLA) has the primary responsibility of carrying out Land Registration to ensure legal certainty over the subject and object of land rights. The process of collecting data and information about parcels of land known as the cadastral process is carried out for legal certainty.

Land Registration as a part of Land Administration in Indonesia is conducted by Ministry of Agrarian and Spatial Planning/ National Land Agency. The cadastral system adopted in Indonesia is a registration of titles with the negative system. As it is stated in Article 19 BAL, the certificate of land title is valid as the strong (not positive or absolute) evidence. As long as it is otherwise inversely proven by the court, then the certificate of land title is the strongest evidence.

Data on land parcels contained in Indonesia are as follows: The number of parcels of land in Indonesia is 90,622,503 parcels with a number of registered parcels is 35,789,766 parcels. It can be seen that $\pm 61\%$ of parcels have not been registered. It makes difficulties in order to answer the question who legally own which land. Started from 2016, The Government of Indonesia (Ministry of Agrarian and Spatial Planning/ National Land Agency) has a big project to accelerate Land Registration by the Project Named PTSL (Pendaftaran Tanah Sistematis Lengkap/ The Complete Systematic Land Registration), The aim of the project is all parcels in Indonesia is registered in Land Registration System at 2025.

One of the policies that is closely related to the land registration process is the land acquisition process. As one of the parties responsible for the land acquisition process, the ministry of agrarian and spatial planning / BPN has a tough task to carry out the process to smooth the implementation of infrastructure development which is the government's priority program at this time.

C. Types and Process of Land Acquisition in Indonesia

1. *Definition of Land Acquisition*

The importance of attention to the current land acquisition process in Indonesia because the current government program that prioritizes infrastructure development requires the provision of land for development. 245 projects and 2 programs, it will require around Rp 4,197 trillion, with funding sources from the State Budget Rp 525 trillion, State-owned Enterprises (BUMN/D) Rp 1,258 trillion and Private Sector Rp 2.414 trillion.

According to (Sumardjono, 2008), as is known, the main objective of land policy is the provision of land needed for development in the right location, at the right time, and at a reasonable price. To control the price of land which is one of the tasks in the context of implementing land policy, the government can conduct the government to intervene through various means / techniques, such as:

- a. land acquisition;
- b. land use regulation / regulation;
- c. provision, maturation and distribution of land through land bank institutions; and
- d. taxation policy.

According to Law No. 2 Year 2012 concerning Land Expropriation for the Development of Public Interest Infrastructure, it is stated that land expropriation is an activity of providing land by giving fair compensation to the rightful parties. Objects of land acquisition are land, upper and lower ground space, buildings, plants, objects related to land, or other things that can be assessed. Whereas the public interest is in the interests of the nation, State and society which must be realized by the government and used as much as possible for the prosperity of the people.

2. *The Process of Land Acquisition*

The Process of land acquisition in Indonesia can be summarized as diagram below:

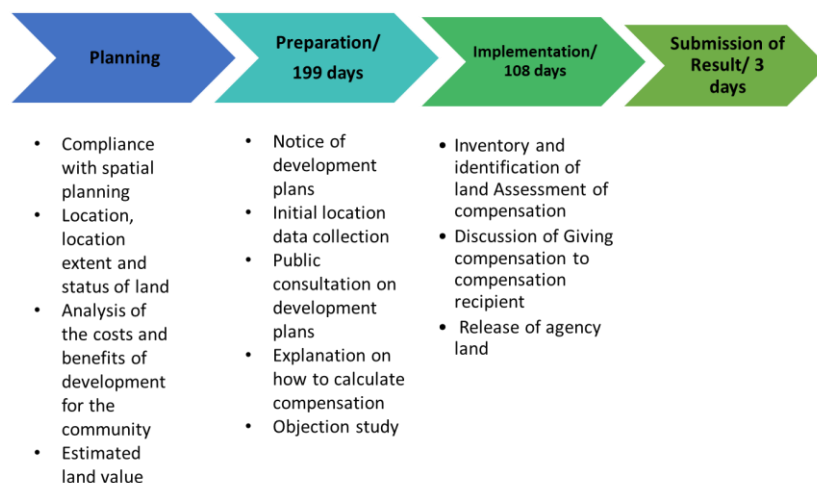


Diagram 1. Standard stages and time of land acquisition process in Indonesia

The process is started with planning stages, followed with Preparation stages, and ended with Implementation Stages.

a. Stages of Planning

In this stage, the agencies requiring land make coordination and asking for assistance from relevant agencies or professionals in finding data on land area, location and land status include:

- 1) determine the coordinates of land acquisition objects
- 2) estimated number of fields
- 3) status of land registered in the object
- 4) surface area

This activity is funded by agencies that need land.

b. Stages of Preparation

After the planning document is received by the Governor, it is marked by proof of receipt given to the agency that requires the land. Furthermore, within 10 days the Governor formed a Preparation Team and Secretariat.

During the preparatory stage, the notification of development plans is also carried out to the rightful parties and affected parties (socialization). Notification of development plans can be carried out several times, it can be day or night in an agreed place in accordance with the culture of the local community plus an announcement in the local newspaper.

At this stage the Preliminary Data Collection is also carried out by the Preparation Team within 30 working days of the notification period of the development plan. The Initial Data Collection Product is a temporary List / data of objects and subjects in the location of the development plan signed by the Chairperson of the Preparatory Team.

Public Consultation is carried out after the initial data collection, at the time of this public consultation the right party must have asked how much compensation and even asked and or asked for planning documents to open the compensation budget stated in the planning document. At the public consultation stage, the purpose and objectives of the development plan are conveyed by the agency requiring land, the stages and time of the process of carrying out the land acquisition are conveyed by the provincial government, the role of the appraiser, tax incentives, objects assessed for compensation and the form of compensation delivered by the BPN, while concerning rights and the obligation is conveyed by the ministry of law and legislation Regional Office.

Public Consultation is followed by repeated public consultation with the aim of inviting parties to object and if necessary, door to door. The agreement and / or disagreement over the location of the development plan is stated in the Minutes along with the reasons signed by the parties and the Preparation Team.

c. Implementation Stages

The stages of implementation include 11 sub-activities, namely:

- 1) Preparation of implementation
- 2) Inventory and Identification
- 3) Announcement
- 4) Verification of Field Maps and Nominative Lists
- 5) Procurement of Land Assessment
- 6) Estimated compensation
- 7) Notification of Amount of Indemnity and Deliberation on Form of Indemnity
- 8) Validation
- 9) Payment of Compensation and Waiver
- 10) Safekeeping of compensation money to the Court
- 11) Submission of Results

The complete stages of the land acquisition process in Indonesia can be seen in the diagram below:

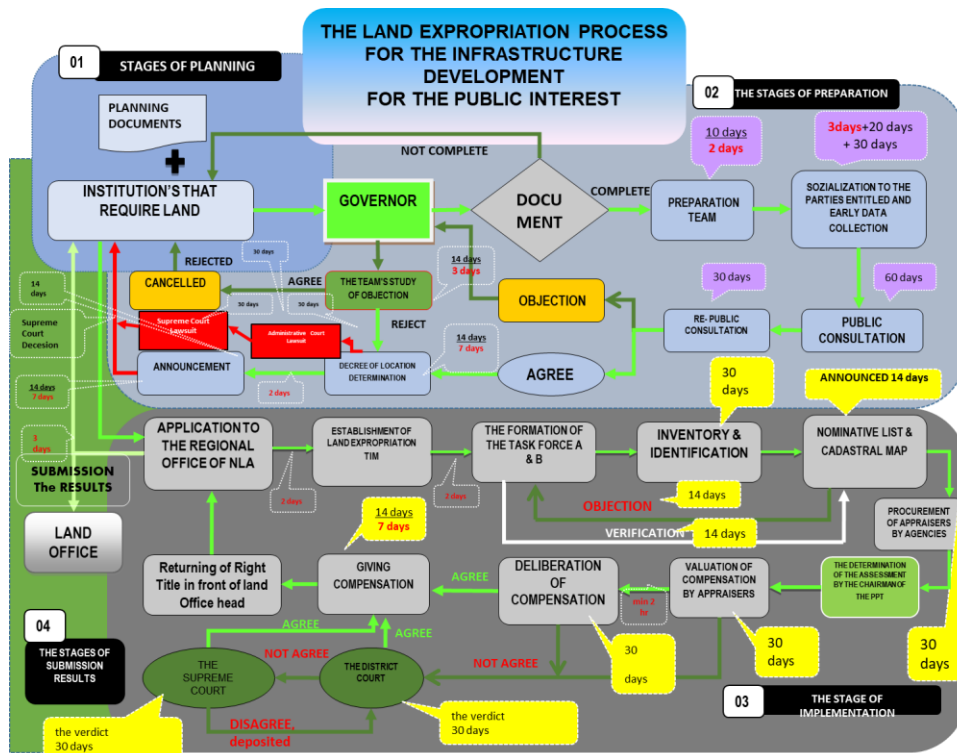


Diagram 2. Full Stages of the Land Acquisition Process in Indonesia

3. Constraints in the Land Acquisition Process in Indonesia

Sometimes the period to finish land acquisition process cannot be achieved as the schedule because a lot of factors that will be explained on this sub chapter. Based on research conducted by (Suyudi, et al., 2018), there are several issues related to land acquisition in Indonesia, namely:

- a. There are doubts from the executor of the land acquisition to act because of the criminal threat in the land acquisition process as a result of interpreting the regulations that are different from the law enforcement apparatuses and the land acquisition executor.
- b. Because of lack of data in the Land Administration, NLA has difficulty to determine the subject of compensation
- c. The land assets of government and State Land have been occupied by the public.
- d. There are village roads whose status is unclear because, as is customary, the village roads are the result of the social agreement of the local people, but the agreement will not be obeyed by person who feel entitled to receive compensation.
- e. The existence of individual control over the forest land resulted in the compensation process being not simple. On one side of the forest area is an area designated for forest sustainability on the other hand the area is inhabited. People who inhabit feel entitled to compensation but the status of land which is a forestry area has the consequence that the land can be utilized only in addition to its allocation.
- f. Although the compensation assessment process has been carried out by an independent appraisal body, there are still some parties who object to the amount of compensation.

4. The Concept of Land Bank in Indonesia

In order to handle the various problem in land acquisition process, the NLA has the idea to implement land banking in Indonesia. The Benefit of Land Banking is to support the implementation of land expropriation for the public interest. It is expected, the process of land expropriation for the development of public interest can run faster and more effectively. The Land Banking is an instrument that accommodates land that can be utilized by the government to support development.

| | |
|------------------------------------|--|
| Land Bank Authority | As the main operator of land collectors and managers in Indonesia; |
| | Agency that has independent authority regulated by Presidential Regulation; |
| | Can participate in spatial planning; |
| | Can develop land use with third parties; |
| | Can be appointed as land manager of land owned by the government or other parties; |
| | Can invest and form an Independent Business Unit. |
| Land Bank Rights | Can own land with Management Right Title which can be utilized by placing Secondary Title (Right of Building, Right of Use etc) |
| | Can obtain funding sources from the National Budget; |
| | As a government agency, The Land that collected by Land Bank can not be subject to land acquisition and ownership tax (BPHTB and PBB) before being utilized by third parties; |
| | Can obtain land through the determination of the authority of the Ministry of Agrarian Affairs and Spatial Planning / BPN from legitimate sources; Can earn income and profits that are directly disbursed by the body. |
| Obligations of Land Banking | Provide land for development programs and public interests; |
| | Conduct land planning and development to increase productivity; |
| | Maintain land utilization in accordance with spatial planning; |
| | Maintaining the stability of land prices to support public interests and low-income communities (MBR); |
| | Facilitating the business world in making investments by providing land more efficiently and effectively. |

Diagram 3. Land Bank Concepts in Indonesia (Limbong, 2013)

D. Land Acquisition Mechanisms in Taiwan

1. *Land Acquisition Types and Processes in Taiwan*

Based on (Interior, 2000), In Taiwan there are three types of expropriations: land acquisition, expropriation of land allotment zones, and incidental takeovers. Basically, zone takeover and land takeover are the same, but zone takeovers can only be used in more limited situations (such as urban revitalization) and are subject to more strict procedural requirements. Whereas Incidental Takeover refers to land acquisition with a combination of land and zone takeover procedures.

Public interests and needs are the two main criteria that must be met before the state exercises expropriation power. Taiwan's constitution protects private property rights, but it also stipulates that private property rights and other human rights can be limited, in line with the "principle of proportionality". The takeover must be "in the public interest" and "as far as is strictly necessary."

Property acquisition is actually more limited to certain objectives / interests including: National defense, communication or transportation, public utility companies, water conservancy, public health and environmental protection, government office buildings, office buildings of local government agencies and buildings - other public buildings, educational, academic and cultural ventures, Social welfare, and state-owned enterprises and other businesses in accordance with the law.

The state can also take over property for the following businesses: building subways, railways, highways, city roads, science parks, export zones, national parks, public housing, public cemeteries, airports, fishing ports and international business ports, wild animal protection zones, waterways, and high schools and elementary schools; preserving cultural heritage; land consolidation; urban renewal; flood prevention; building a crop market.

With regard to agricultural land used to establish industrial zones / other designations, the competent authority responsible for the relevant industry must consider the objectives of the public interest and the need for expropriation at the time of appointment or rezoning. Agricultural land in principle cannot be changed, unless it is difficult to avoid changing its land use. Changes in the allocation also require a comprehensive assessment of the public interests and needs of the takeover project. Variables to be considered include:

- a. Social factors: Including the number of people affected by expropriation, the age structure of the affected population, and the level of impact of the planned takeover on the surrounding community, lifestyle and health risks for disadvantaged groups.
- b. Economic factors: Including the effects of planned takeovers on tax revenues, food security, increase / decrease in employment or population that may be forced to change jobs, takeover costs, public facilities needed by the government at all levels, government expenses and expenses, agriculture, forestry, fisheries, or livestock industry chains and land use integrity.

- c. Cultural and ecological factors: Includes changes in urban / rural landscapes, cultural heritage, living conditions or lifestyles caused by the takeover plan, and their impact on the ecological environment of the area, surrounding population or society as a whole.
- d. Sustainable development factors: Includes national sustainable development policies, sustainability indicators, and national land use planning.
- e. Others: Other relevant factors that must be evaluated by the Ministry of Home Affairs as the main responsible parties for Land Acquisition activities to review the assessment of public interests and needs.

Basically, only state can use the power of land acquisition. The Ministry of Home Affairs has the power to approve or reject land acquisition projects. In Taiwan, central government agencies, city governments, regional governments, city governments, and irrigation associations are agencies that can apply for land acquisition. However, land acquisition for the private sector is also possible.

2. *Land Compensation Mechanism in Taiwan*

The land market value must be used to compensate for land acquisition. The compensation value that takes into account; construction costs (such as houses); agricultural costs (trees); costs incurred to increase land; business loss; and relocation costs. Compensation must be paid within fifteen days after the end of the public announcement period, and the public announcement period is 30 days. City / district governments make public announcements and notify land acquisition with the approval of the Ministry of the Interior.

Compensation for construction repairs is equal to the cost of replacement at the time of the takeover. City / district governments are responsible for calculating the cost of replacing themselves or assigning real estate appraisers to carry out assessment / property valuation work. Only legal land and buildings are entitled to compensation. Compensation for agricultural crops must be determined based on the value of the harvest, on condition that the harvest will be harvested in less than one year from the date of expropriation.

According to relevant laws and regulations, landowners who have incurred costs to improve land (such as building canals or dams and opening roads) and stopping repair work can receive compensation.

State administrative courts are subject to local government judgments about current market value. Administrative courts in Taiwan only conduct "procedural reviews" about determining compensation for taking, rather than "substantive reviews". That is, the administrative court only checks whether all the procedures set out in the rules and laws have been followed or not.

In principle, potential land users / agencies who need land must negotiate in good faith and in their best efforts with landowners needed for business, before submitting an

application to the Ministry of the Interior for land acquisition. Land use applicants must bargain with the owner based on "market value". However, the market value in the takeover procedure must be approved by the Land Value Evaluation Committee, while the market value is defined as "average normal transaction prices on the market"

In Taiwan, landowners are excluded from taking any part of the development surplus (for example: an increase in the value of land resulting from the development carried out). Therefore, for expropriation of ordinary land, all development surpluses go to the state. Whereas the takeover of the zone allows the recipient of compensation to obtain a development surplus. In the zone takeover procedure, the recipient of the compensation has the choice to choose between compensation in the form of cash (as in the land acquisition procedure) and compensation in another form of receiving post-development parcels in exchange for cash compensation. The size of the land as post-development compensation must not be greater than 50%, but greater than 40% of the pre-development land area, because the market unit value is often more than double post-development so people often choose the second option.

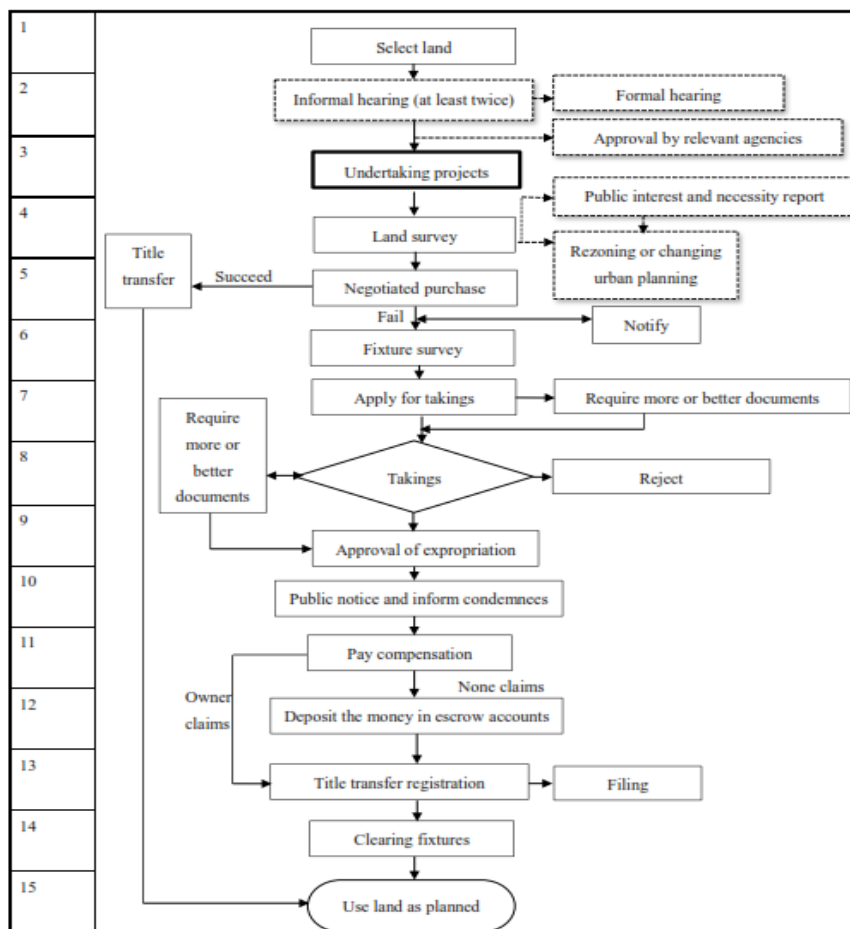


Diagram 4. Land Acquisition Process in Taiwan (Chien Chang, 2016)

3. *Dispute Resolution Mechanism*

Everyone with an interest in land acquisition can reject the contents of public announcements about land acquisition during the announcement period. The amount of compensation included in the announcement. The regional government must investigate this matter and inform the person concerned in writing about the findings and actions taken. If they are still dissatisfied, and they are still concerned about the amount of compensation, the local government has the discretion to refer the matter to the Land Value Evaluation Committee for reconsideration. If they still don't agree with the results of the review, they can start an "administrative appeal." If the objection relates to the procedure, the Review Committee in an administrative appeal is expected to conduct a "benefit review"; that is, modifying legal and invalid administrative decisions. In other words, they must consider every aspect of administrative action, examine whether it is in accordance with government policy, and explore whether different decisions will be better or not.

The last stop in the dispute resolution mechanism is the administrative court, except if the convictors lose and bring their case to the Constitutional Court, the primary court is the High Administrative Court. In principle, the claimants can appeal to the Supreme Administrative Court if the decision of the high court is against the law, in this case, in Taiwan the administrative court highly respects the administrative / Government institution in the case of appraisal of takeover compensation.

4. *Public Private Partnership Mechanism in Taiwan*

In Taiwan the Public Private Partnership (PPP) mechanism is carried out to encourage development. PPP is an infrastructure financing model that divides development responsibilities into two parties, namely the government and the private sector, for example in the process of developing the fast train transportation facility, the model of cooperation undertaken is as follows:

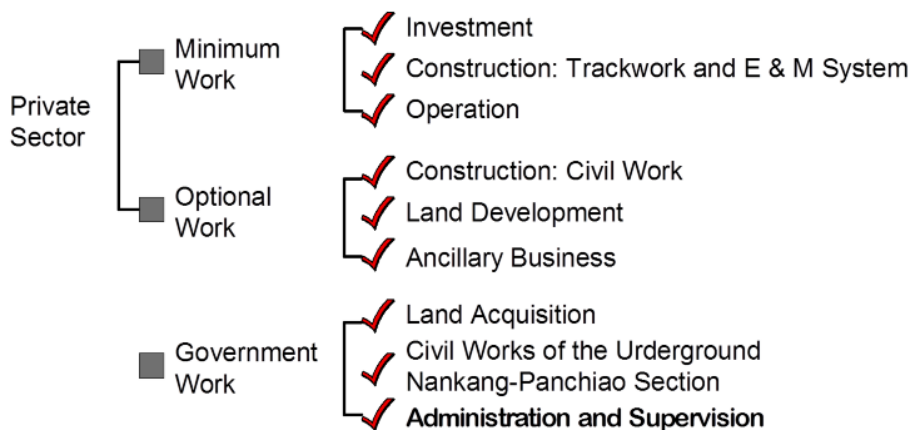


Diagram 5. Example of a PPP Mechanism implemented in the construction of a Fast Train in Taiwan (Cheng, 2018)

The main reason for private participation in the development process is because of the limited funds owned by the government and the nature of private companies that are more effective and efficient than government institutions.

E. Conclusion

Taiwan's success in the development process uses land acquisition procedures because there are several keys, namely:

1. Good coordination between government agencies, both executives (ministries and regional governments) and judicial institutions (Judiciary, Prosecutors and police) so that conflicts that occur due to land acquisition processes can be minimized. It should be noted here that the court in this case the administrative court only hears cases that are administrative violations rather than substantive cases.
2. The judiciary highly respects government institutions, in this case the ministry and the regional government in the land acquisition process.
3. There is an option for people affected by land acquisition to choose compensation with money or they benefit from the development process carried out by obtaining parcels of land (although with a smaller area) in the zone of land to be acquired.
4. Involve the private sector with the Public Private Partnership mechanism to finance the development process.
5. Legal land as the only object for land acquisition that will receive compensation will push land owner to register their land.

F. Recommendation

1. Based on lessons learned from Taiwan, especially the strong coordination between government agencies in Taiwan in the Land Procurement process for the public interest, The process of land acquisition in Indonesia requires improvement in terms of coordination between government agencies (Judiciary, executive and legislative institutions) to equalize the perception that government programs are for the welfare of the people so that unnecessary legal processes occur in relation to the land acquisition process in Indonesia will not happen.
2. Responsibilities of development process can be shared between the government and the private sector to accelerate and streamline the development process by considering the limitations of government funds.

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