

THE REAL ESTATE  
LAW REVIEW

EIGHTH EDITION

Editor  
John Nevin

THE LAWREVIEWS

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EIGHTH EDITION

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This article was first published in March 2019  
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Published in the United Kingdom  
by Law Business Research Ltd, London  
87 Lancaster Road, London, W11 1QQ, UK  
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ISBN 978-1-83862-009-7

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ALLEN & OVERY SCS

AL TAMIMI & COMPANY

AUMENTO LAW FIRM

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# PREFACE

I am delighted to introduce the eighth edition of *The Real Estate Law Review*. The continued success of the *Review* confirms its relevance to real estate practitioners and their clients. Real estate is increasingly viewed on a global basis and readers can only benefit from a general understanding of how individual jurisdictions operate within the global real estate market.

This edition extends to 31 jurisdictions, and we are delighted to welcome new contributions from distinguished practitioners from around the world. I am very grateful to all contributors for their hard work and essential role in compiling this eighth edition. Each chapter provides an invaluable insight into key legal issues and market trends in the author's jurisdiction and, together, they offer an up-to-date synopsis of the global real estate market.

The *Review* seeks to identify distinctions in practice between the different jurisdictions by highlighting particular local issues. We believe that this offers investors and occupiers and their professional advisers an invaluable guide to real estate investment outside their own domestic market. Overseas investors are increasingly prepared to look beyond traditional markets and sectors to exploit international opportunities as and when they arise. Often, investors need to act quickly, and we hope that the *Review* provides an advantageous starting point to understanding cross-border transactions in the light of the reader's own domestic forum.

International economic and political instability continues to have a significant effect on the global real estate market. In the UK, Brexit-generated uncertainty remains as negotiations for leaving the EU are still ongoing as we approach the 29 March 2019 deadline. However, the continued attraction of UK real estate to overseas investors confirms that each event or development in a particular country must be seen in a global context to ascertain the bigger picture. It is no longer possible to ignore globalisation and view real estate markets in isolation. Brexit notwithstanding, the UK remains a safe haven for investors from around the world, and investment levels in London and the wider UK market remain buoyant.

In addition to all the distinguished authors, I would like to thank the members of the Law Review team for their tireless work in compiling this eighth edition of *The Real Estate Law Review*.

**John Nevin**  
Slaughter and May  
London  
February 2019

# INDONESIA

*Ayik Candrawulan Gunadi and Tania Faramutia*<sup>1</sup>

## I INTRODUCTION TO THE LEGAL FRAMEWORK

Land and property in Indonesia are generally governed by the Indonesian Agrarian Law,<sup>2</sup> which is quite a complex piece of legislation that reflects and adopts customary (*adat*) law developed over hundreds of years at rural village level, and was further modified by Dutch colonial rule. Prior to the issuance of the Agrarian Law, *adat* law and Western law coexisted, governing land registration for Indonesians and foreigners respectively. The Agrarian Law aimed to create a uniform regime and end the dualism on land matters, while still maintaining the communal concepts applicable to land under *adat* law.

Under the Agrarian Law, the state is authorised to determine the proper use of land, the relationship between land and individuals or groups of individuals, and the consequences of legal actions concerning land.<sup>3</sup>

In general, land status can be divided into two groups, namely state land and private land. For the latter, the Agrarian Law introduced the classification of land rights and a registration system, which has resulted in the issuance of land certificates by the National Land Agency (BPN). A land certificate is considered the strongest evidence of a land title right under Indonesian law, and records, among other data, the land title right, name of the title holder, the land area, the title period, the issuance date and security interests created upon the land. Regardless of the land registration system introduced by the Agrarian Law, significant parts of private land in Indonesia remain unregistered and thus uncertificated. Often the only documentation available to support a claim of right is the *girik* right, which is not evidence of title but rather a land tax receipt evidencing that the 'holder or possessor' of the land has paid the tax for the land in question. While this often creates certain deficiencies in terms of legal certainty, in practice, in the absence of a valid land right certificate, the *girik* letter, supported by certain other supporting documents (such as statement letters issued by the local sub-district head, district head or village head confirming the history of the land) are accepted as an indication of 'ownership by possession' to such uncertificated land.

The most common land title rights in Indonesian practice are as follows.

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1 Ayik Candrawulan Gunadi is a partner and Tania Faramutia is an associate at Ali Budiardjo, Nugroho, Reksodiputro.  
2 Law No. 5 of 1960 on Agrarian Law (the Agrarian Law).  
3 Article 2 (2) of the Agrarian Law.

### **i Right of ownership (*hak milik* or freehold)**

*Hak milik* is a right that gives the holder the fullest right a person can possess over land in Indonesia.<sup>4</sup> There is no time limit on the ownership of the land. Only Indonesian citizens and certain limited Indonesian legal persons or entities may hold *hak milik*.<sup>5</sup> A limited liability company (PT), including a foreign investment company (PMA company), is not allowed to hold *hak milik*. If, under certain circumstances, the holders of *hak milik* are foreigners including PMA companies, they must convert the *hak milik* into other rights; for example, a *hak guna usaha* (HGU) or *hak guna bangunan* (HGB) (as explained below).<sup>6</sup>

### **ii Right to build (HGB)**

HGB is the most common and typical land title held by a PMA company conducting real estate business in Indonesia. HGB is a right created over state land, *hak milik* or *hak pengelolaan* (a right obtained from the state to control land) authorising the holder to utilise the land, specifically to construct buildings or facilities (as opposed to land specifically intended for agricultural purposes; see the HGU, explained below).<sup>7</sup> HGB can be granted for a maximum period of 30 years, with possible extension of 20 years<sup>8</sup> and renewal.<sup>9</sup> HGB may be held by Indonesian individuals and Indonesian legal entities, including a PMA company,<sup>10</sup> and is transferable to other eligible third parties during the term of its existence and can be encumbered with a mortgage, all of which are subject to registration with the relevant land office.<sup>11</sup>

### **iii Right to cultivate (HGU)**

HGU is a right created over state land, authorising the holder to utilise the land for agriculture or plantation purposes.<sup>12</sup> Like HGB, HGU is limited in duration, and is usually for 25 years but can be given for a maximum of 35 years, with the option of extension for a maximum of 25 years<sup>13</sup> and renewal.<sup>14</sup> HGU may be held only by Indonesian individuals or Indonesian legal entities, including PMA companies,<sup>15</sup> and is transferable to other eligible third parties during the term of its existence<sup>16</sup> and can be encumbered with a mortgage as a security.<sup>17</sup> The transfer and the creation of a mortgage upon an HGU must be registered with the relevant land office.<sup>18</sup>

4 Article 20 (1) of the Agrarian Law.

5 Article 21 (1) and (2) of the Agrarian Law.

6 Article 21 (3) of the Agrarian Law.

7 Article 35 (1) of the Agrarian Law in conjunction with Article 21 of Government Regulation No. 40 of 1996 on the Right to Cultivate, Right to Build and Right to Use Land (GR No. 40/1996).

8 Article 35 (1) and (2) of the Agrarian Law.

9 Article 25 (2) of GR No. 40/1996.

10 Article 36 (1) (b) of the Agrarian Law.

11 Article 33 (1) of GR No. 40/1996.

12 Article 28 (1) of the Agrarian Law.

13 Article 29 (1) and (2) of the Agrarian Law.

14 Article 8 (2) of GR No. 40/1996.

15 Article 30 (1) of the Agrarian Law.

16 Article 28 (3) of the Agrarian Law.

17 Article 33 of the Agrarian Law.

18 Article 15 (1) and Article 16 (3) of GR No. 40/1996.

**iv Right of management (*hak pengelolaan*)**

*Hak pengelolaan* is a right obtained from the state to control land. *Hak pengelolaan* can be granted only to the following agencies or bodies:

- a* government agencies including regional governments;
- b* state-owned companies;
- c* regional government-owned companies;
- d* limited liability state-owned companies;
- e* special-authority agencies; and
- f* other governmental legal entities appointed by the government.

Some state-owned companies manage industrial estate compounds while relying on *hak pengelolaan*. When such state-owned companies ‘sell’ *hak pengelolaan* land to PMA companies, the state-owned company as the seller and the PMA company as the buyer will enter into a cooperation agreement, by which the PMA company is granted the right to ‘use or utilise land’ and to apply for HGB title over the *hak pengelolaan* land. HGB created over *hak pengelolaan* land may be mortgaged to a third party, provided that consent is given by the state-owned company. In practice, consent is usually given in advance and included in the above-mentioned cooperation agreement.

**v Right to use (*hak pakai*)**

*Hak pakai* is a right to utilise land or to collect the products from such land. It may be granted over:

- a* state-owned land;
- b* *hak milik*; or
- c* *hak pengelolaan*.<sup>19</sup>

*Hak pakai* is available to Indonesian citizens and Indonesian legal entities, foreign citizens who reside in Indonesia and foreign legal entities having representation in Indonesia, representatives of foreign countries and representatives of international institutions, departments and non-departmental government institutions, regional government, and religious and social institutions.<sup>20</sup> *Hak pakai* is limited in duration (i.e., it is based on either a decree of the BPN or a contract between the *hak milik* holder and the *hak pakai* holder). A *hak pakai* is transferable and may be granted as security by way of a mortgage<sup>21</sup> but is in any case subject to consent from the state or the holder of the *hak pengelolaan* or *hak milik* (as the case may be).<sup>22</sup>

## II OVERVIEW OF REAL ESTATE ACTIVITY

The text below provides an overview of real estate activity with regard to apartments and condominiums.

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19 Article 41 of GR No. 40/1996.

20 Article 39 of GR No. 40/1996.

21 Article 53 (1) and Article 54 (2) of GR No. 40/1996.

22 Article 43 of the Agrarian Law.

## **i General**

With the presidential election due in 2019, 2018 real estate activity experienced slow but increasing growth.<sup>23</sup>

Property market conditions in 2018 are likely to have been slightly influenced by political sentiment, which had a psychological impact in the second semester of 2018. Market purchasing power is growing, relatively speaking, but is in a waiting and selective position in choosing investment.<sup>24</sup> The commercial property price index in quarter III of 2018 showed an increase of 0.03 per cent, higher than the -0.16 per cent contraction during the previous quarter, which indicates that the commercial property market in Indonesia is improving.<sup>25</sup> Despite the improvement, real estate activity in Indonesia continues to face some legal challenges.

The following discussions elaborate, from a legal perspective, the basic requirements and some of the challenges that investors need to anticipate in the real estate sector in Indonesia, particularly in relation to the apartment and condominium business in Jakarta.<sup>26</sup>

## **ii Land acquisition**

Land acquisition is one of the most problematic issues in real estate activities in Indonesia.

Indonesian law recognises two types of land acquisition: acquisition of unregistered and uncertified land, and acquisition of registered land. To acquire land, a PMA company is required first to obtain a location permit that is issued by the OSS Agency (except under certain circumstances whereby the PMA company is exempted from the requirement).<sup>27</sup> A location permit basically authorises the PMA company to acquire the land and to obtain a land title (commonly to be completed within three years, with the possibility of a one-year extension provided that at least 50 per cent of the total area has been acquired). A location permit merely provides a right for the PMA company to acquire the land; it does not, therefore, oblige the PMA company to acquire all of the land identified in the location permit, nor does it oblige the landowner to sell his or her land to the PMA company. The maximum area of land that the PMA company is permitted to acquire is stated in the location permit.<sup>28</sup>

Acquisition of unregistered land is more challenging than acquisition of registered land because it is difficult for investors to run a complete and thorough background check of the history of the land, including its history of legal ownership and related environmental

23 <http://market.bisnis.com/read/20180109/192/724951/2018-sektor-properti-diprediksi-masih-lesu>, published on 9 January 2018.

24 <https://republika.co.id/berita/ekonomi/makro/18/01/25/p33w4k380-pengaruh-psikologis-pemilu-bagi-bisnis-properti>, published 25 January 2018.

25 Bank Indonesia Commercial Property Development Quarter III-2018.

26 Outside Jakarta, other regional governments may impose different or additional requirements or different policies.

27 The establishment of the integrated OSS system under Government Regulation No. 24 of 2018, which entered into force on 21 June 2018, constitutes a quite fundamental overhaul of Indonesia's business licensing regime. The OSS system is designed for use by all types of private-sector business organisations, from limited liability companies to civil partnerships, across all economic sectors, with some exceptions. The Schedule to GR 24/2018 also sets out comprehensive lists of the licences and technical recommendations required to carry on business in all major economic sectors. (see [http://www.abnrlaw.com/news\\_detail.php?send\\_news\\_id=322&year=2018](http://www.abnrlaw.com/news_detail.php?send_news_id=322&year=2018), published 4 September 2018).

28 Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency No. 14 of 2018 on Location Permits.

documents. Acquisition of unregistered land is commonly completed through a private sale between landowner and purchaser, though it should be noted that a deed of transfer signed before a certified land-deed official (PPAT) at the location of the land is required for registration with the relevant land office, while acquisition of registered land is commonly completed through a deed of transfer before a PPAT at the location of the land, followed by the registration and recordation of the transfer with the relevant land office where the land is located. For registered land, investors usually conduct a land check or due diligence review at the district courts and the relevant BPN office prior to completion of the transaction, to enable them to identify any existing disputes and encumbrances, and to review the history of transfer of the land.

### **iii Material building and utilisation permits**

#### ***Spatial Utilisation Principle Licence (IPPR)***

An IPPR (previously known as an SIPPT) is a specific permit issued by the Jakarta regional government for the utilisation of certain space in the Jakarta area, including for the construction of an apartment building. An IPPR normally imposes obligations on the holder to construct social facilities and pay a contribution to the local government.<sup>29</sup>

As a general rule, a licence or permit, including an IPPR, is an individual document granted specifically to its holder, based on an assessment made by a governmental authority. Given its ‘individual nature’, from a regulatory perspective, such a permit or licence is strictly non-transferable and may not be used by any person other than its registered holder.<sup>30</sup> However, in practice, it is not uncommon for an IPPR to be used by several companies with respect to land located in the same area. From a legal perspective, ideally a new IPPR or amendment to the existing IPPR is obtained to reflect the ‘new’ owners of the land whenever the land is transferred. Such a case, however, raises the legal question of whether the new owner is obliged to construct new social facilities and pay an additional contribution to the local government; this question is particularly relevant where the previous owner has already fulfilled all of these requirements.

#### ***Building permit (IMB)***

The IMB Regulations<sup>31</sup> require all parties to obtain an IMB before constructing a building. An IMB authorises its holder to construct, alter, expand, reduce in size or maintain a building

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29 Decree of Governor DKI Jakarta No. 41 of 2001 on Receipt of Obligation Procedures for SIPPT Holders in DKI Jakarta, and Decree of Governor of DKI Jakarta No. 139 of 1998 on Procedures for Application and Completion of Land Nomination and Utilisation Permit for Foreign and Domestic Investment Companies in DKI Jakarta, in conjunction with Regulation of Governor of DKI Jakarta No. 209 of 2016 on the Permit and Recommendation of Spatial Utilization (Regulation No. 209/2016).

30 Article 29 of Regulation of Governor of DKI Jakarta No. 209 of 2016 on the Permit and Recommendation of Spatial Utilisation (Regulation No. 209/2016) explicitly provides that an IPPR is not transferable.

31 Law No. 28 of 2002 on Building Structure (Law No. 28/2002) and its implementing regulation, Government Regulation No. 36 of 2005 on the Implementing Regulation of Law No. 28 of 2002 on Building Structure (GR No. 36/2005); Regulation of Minister of Internal Affairs No. 32 of 2010 on Guidelines for the Issuance of Building Construction Permits (MR No. 32/2010); DKI Jakarta Regional Government Regulation No. 7 of 2010 on Building Structure (Regulation No. 7/2010); and Regulation of Governor of DKI Jakarta No. 128 of 2012 on Sanctions for the Implementation of Building Structure (Governor Regulation No. 128/2012); Law No. 28/2002, GR No. 36/2005, MR No. 32/2010, Regulation No. 7/2010, and Governor Regulation No. 128/2012: collectively, the IMB Regulations.

structure in accordance with the applicable administrative and technical requirements.<sup>32</sup> It is stated in the text of the IMB Regulations that the IMB will be issued within 25–30 business days of payment of a contribution fee being made.

In the Jakarta area, to facilitate a speedy licensing process, the Jakarta local government now issues a ‘preliminary licence’, which serves as a temporary licence for the construction of certain parts of the building while waiting for the actual IMB to be issued.<sup>33</sup>

### ***Occupancy permit and certificate of ‘good function’***

Two existing regulations require a developer to obtain a specific permit before operating or utilising an apartment. The Apartment Regulations<sup>34</sup> require developers to obtain an occupancy permit, while Regulation No. 7/2010 requires developers to obtain a certificate of good function,<sup>35</sup> both issued by the DKI Jakarta government. Neither the Apartment Regulations nor Regulation No. 7/2010 have been revoked, and, therefore, legally speaking, both requirements are still valid. In practice, however, to the best of our knowledge, the DKI Jakarta government does not seem to implement the Apartment Regulations. An official of the DKI Jakarta regional government explained that the DKI Jakarta government currently issues only the certificate of good function and not the occupancy permit.

### ***Environmental permit***

All building construction, including condominiums, requires the preparation of certain environmental documents.<sup>36</sup> The Indonesian Environmental Law<sup>37</sup> distinguishes several categories of documents and permits, depending on the impact of the construction. For those deemed to have a significant impact on the environment, a PMA company must prepare an environmental impact analysis report (AMDAL), while for constructions deemed to have a less significant impact on the environment, an environmental management and monitoring efforts report (UKL/UPL) or a statement of environmental management and monitoring undertaken (SPPL) is needed. In addition, those required to prepare an AMDAL or UKL/UPL must also obtain an environmental licence. For condominiums, depending on their size and location, the requirement is to obtain the approval of AMDAL or UKL/UPL, and the environmental licence.<sup>38</sup>

### ***Requirement to construct a general condominium***

Law No. 20 of 2011 on Condominium, and Regulation of Minister of Public Housing No. 10 of 2012 on Implementation of Housing and Settlement Area with Balanced Occupancy (as

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32 The IMB Regulations.

33 Article 44 of Regulation of the Governor of DKI Jakarta No. 129 of 2012.

34 Government Regulation No. 4 of 1988 on Apartments; Jakarta Regional Government Regulation No. 1 of 1991 on Apartments in DKI Jakarta; and Governor of DKI Jakarta Decree No. 942 of 1991 on the Implementing Regulation for Apartments in DKI Jakarta: collectively, the Apartment Regulations.

35 Article 148 of Regulation No. 7/2010.

36 Article 52 of Regulation No. 7/2010.

37 Law No. 32 of 2009 on Environmental Management and Protection (Law No. 32/2009).

38 Decree of Governor of DKI Jakarta No. 189 of 2002 on Business that Requires UKL/UPL in DKI Jakarta; and Decree of Governor of DKI Jakarta No. 2863 of 2001 on Business that Requires AMDAL in DKI Jakarta.

further amended)<sup>39</sup> (the Condominium Regulations) requires every developer constructing a commercial condominium<sup>40</sup> to also construct a general condominium.<sup>41</sup> The total floor area of the general condominium must be at least 20 per cent of the total floor area of the commercial condominium.<sup>42</sup> This requirement significantly affects investors, and their investments, in Indonesia. Commonly, the requirement to construct a general condominium will be stipulated in the IPPR.

### III FOREIGN INVESTMENT

In general, the most common practice for investment in the real estate business in Indonesia is to set up a PMA company because foreign citizens and entities are not allowed to conduct business activities directly in Indonesia. The following paragraphs highlight the general rules on ownership of the most common land title rights in Indonesia, including the one that may be held by a PMA company.

#### i Right of ownership (*bak milik* or freehold)

Only Indonesian citizens and certain limited Indonesian legal persons or entities may hold the right of ownership (*bak milik*).<sup>43</sup> A PT, including a PMA company, is not allowed to hold a right of ownership.

#### ii Right to build (HGB)

An HGB may be held by Indonesian individuals and Indonesian legal entities, including a PMA company.<sup>44</sup>

#### iii Right to cultivate (HGU)

An HGU may only be held by Indonesian individuals or Indonesian legal entities, including PMA companies.<sup>45</sup>

#### iv Right of management (*bak pengelolaan*)

Right of management (*bak pengelolaan*) can be granted only to the following agencies or bodies:

- a* government agencies including regional governments;
- b* state-owned companies;
- c* regional government-owned companies;

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39 Regulation of Minister of Public Housing No. 07 of 2013 on the Amendment to Regulation of Minister of Public Housing No. 10 of 2012 on Implementation of Housing and Settlement Area with Balanced Occupancy (Minister Regulation No. 7/2013).

40 A commercial condominium is defined as a condominium developed for the purpose of earning profit, with a value exceeding the value of a general condominium.

41 A general condominium is defined as a condominium developed for people on low incomes, the rate of the sales value for which – for the Jakarta Selatan area, for example – is a maximum of 331.2 million rupiah per unit or 9.2 million rupiah per m<sup>2</sup>.

42 Article 9a (5) of Minister Regulation No. 7/2013.

43 Article 21 (1) and (2) of the Agrarian Law.

44 Article 36 (1) (b) of the Agrarian Law.

45 Article 30 (1) of the Agrarian Law.



- d* limited liability state-owned companies;
- e* special-authority agencies; and
- f* other governmental legal entities appointed by the government.

Some state-owned companies manage industrial estate compounds with a *hak pengelolaan*. When such state-owned companies ‘sell’ *hak pengelolaan* land to PMA companies, the state-owned company as the seller and the PMA company as the buyer will enter into a cooperation agreement, by which the PMA company is granted the right to ‘use or utilise land’ and to apply for a HGB title over the *hak pengelolaan* land.

**v Right to use (*hak pakai*)**

The right to use (*hak pakai*) may be granted over:

- a* state-owned land;
- b* *hak milik*; or
- c* *hak pengelolaan*.<sup>46</sup>

The right to use (*hak pakai*) is available to Indonesian citizens and Indonesian legal entities, foreign citizens who reside in Indonesia and foreign legal entities with representation in Indonesia, representatives of foreign countries and representatives of international institutions, departments and non-departmental government institutions, regional government, and religious and social institutions.<sup>47</sup>

#### IV STRUCTURING THE INVESTMENT

Foreign citizens and foreign companies are not allowed to conduct business activities directly in Indonesia. Indonesian investment law requires foreign investment to be conducted through direct capital participation in a PMA company.<sup>48</sup> Therefore, the most common practice for investment in the real estate business in Indonesia is to set up a joint venture project company in the form of a PMA company.

General foreign investment in Indonesia is subject to certain limitations under the Negative Investment List<sup>49</sup> (a list of the business areas that are closed to investment, including those reserved for small and medium-sized enterprises), which is updated periodically by the government. Based on the prevailing Negative Investment List, real estate business (i.e., purchasing, selling, renting and operating either owned or rented real estate, as well as land sales and operational activities in residential areas) is open to 100 per cent foreign participation. While previously the Indonesia Investment Coordinating Board was in charge of issuing licences for a PMA company, since June 2018 with the launch of the OSS system,<sup>50</sup> licensing for a PMA company is integrated through an online system, overseen by the OSS Agency.

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46 Article 41 of GR No. 40/1996.

47 Article 39 of GR No. 40/1996.

48 Article 5 (2) of Law No. 25 of 2007 on Investment (the Investment Law).

49 Presidential Regulation No. 44 of 2016 on List of Business Fields Closed and Business Fields Open with Conditions to Investment (the Negative Investment List).

50 Please refer to footnote No. 27.

## V REAL ESTATE OWNERSHIP

### i Planning

Every building must have a function and classification. The law divides function and classification of buildings into five types: those with a residential, religious, business, social and cultural, or special function.<sup>51</sup> When planning an apartment or condominium development, the PMA company must ensure that the function and classification of the apartment building is in line with the zoning regulation or the city plan guidelines.<sup>52</sup> Amendments to the apartment function and classification can be made so long as the new function and classification are in line with the zoning regulation or the city plan guidelines, and must be reflected in the PMA company's IMB.<sup>53</sup>

### ii Tax

Any acquisition of land title is subject to 5 per cent tax, payable by the acquirer promptly upon the execution of the transaction (for example, in the sale and purchase of land, the acquisition tax is payable upon the signing of the land title transfer deed before a PPAT).<sup>54</sup> For any income received from the transfer of land or buildings, in general, the transferor is also subject to 2.5 per cent tax on the transaction price.<sup>55</sup> In practice, it is common that a PPAT will complete the transaction, but the BPN will not accept the land registration until both acquisition tax and income tax are paid to the government.

### iii Finance and security

Security interests in Indonesia are limited to those prescribed by Indonesian law. For land and buildings (including apartments), the type of security interests prescribed by law is the *hak tanggungan* (often translated as 'mortgage'). A *hak tanggungan* is created through the signing of a mortgage deed in Indonesian language before a PPAT and registration with the BPN office<sup>56</sup> where the land is located.

*Hak tanggungan* only secures debts up to the amount specified in the mortgage deed (secured amount). The secured amount affects the PPAT fee payable by the mortgagor. The higher the secured amount, the higher the PPAT fee (in practice, normally, a PPAT charges 0.1 per cent of the secure amount as the fee). Because of its significant impact, the secured amount in *hak tanggungan* often becomes a major issue in financing transactions, as the creditor will try to push for the secured amount to be as high as possible (normally between 120 per cent and 150 per cent of the total outstanding debt), while, in contrast, the debtor will try have the secured amount fixed as low as possible.

*Hak tanggungan* grants a preference right to the holder<sup>57</sup> in the event of bankruptcy of the mortgagor, and it follows the encumbered property, notwithstanding any transfer of the property, until the debt secured has been paid. Enforcement of *hak tanggungan* must be done

51 Article 6 (2) of Regulation No. 7 of 2010.

52 Article 7 of Regulation No. 7/2010.

53 Article 11 of Regulation No. 7 of 2010.

54 Law No. 28 of 2009 on the Regional Taxes and Dues.

55 Government Regulation No. 34 of 2016 on Income Tax from the Income of Land and/or Building Transfer, and Conditional Sale and Purchase Agreement of Land/or Building including its amendment.

56 Article 10 (2) and Article 13 (1) of Law No. 4 of 1996 on Mortgages (the Mortgage Law).

57 Article 1 (1) of the Mortgage Law.

by way of a sale by public auction or private sale. In a public sale or auction, the mortgagee is entitled to use the proceeds of the auction towards repayment of the debt.<sup>58</sup> Private sale is allowed based on mutual consent between the mortgagor and mortgagee and if, by doing so, the highest sale price beneficial to both parties can be achieved. *Hak tanggungan* may not include a provision allowing the creditor to take possession of the property should the debtor be in default.<sup>59</sup>

## VI LEASES OF APARTMENT PREMISES

With the exception of the lease of general (low-budget) apartments or apartments constructed using the state or a regional budget, there are no specific requirements for lease and rent of apartments in Jakarta. Therefore, under Indonesian law, an apartment lease is generally a contractual matter.

Lessors normally also charge a security deposit to the customer. The amount of the deposit varies between apartments, and is solely at the lessor's discretion. In one case, a lessor charged 100 per cent of the rent (for a short-term lease) as the security deposit.<sup>60</sup> The security deposit is returned to the customer at the end of the lease period should there be no damage to the premises.<sup>61</sup>

We note that, prior to March 2015, many apartment rents were charged in foreign currency. However, in light of the issuance of the Indonesian central bank regulation requiring all payment transactions in Indonesia to be conducted in Indonesian currency,<sup>62</sup> effective as of March 2015 (for cash transactions) and July 2015 (for non-cash) transactions, all apartment rents must be charged in rupiah. This development has had quite a significant impact on the many property companies who receive offshore financing in US dollars, and who were reliant on customers' rent for their financing repayments.

## VII DEVELOPMENTS IN PRACTICE

There is an ongoing trend towards transit-oriented development (TOD) within the Greater Jakarta area, which is expected to be a part of the Greater Jakarta citizens' lifestyle within the next few years.<sup>63</sup> Several railway infrastructure projects are being developed within the Greater Jakarta area, for instance, the Jakarta Mass Rapid Transit and Jakarta Light Rail Transit. Development of transportation infrastructure has encouraged the development of apartments within the surrounding areas.<sup>64</sup> The growth of industrial areas in certain area of Greater Jakarta has also encouraged employees to rent apartment near their workplace.<sup>65</sup> In

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58 Articles 6 and 20 of the Mortgage Law.

59 Article 12 of the Mortgage Law.

60 *ibid.*

61 *ibid.*

62 Bank Indonesia Regulation No. 17/3/PBI/2015 on the Mandatory Use of Rupiah in the Republic of Indonesia and its Circular Letter No. 17/11/DKSP, dated 1 June 2015.

63 <http://bisnis.liputan6.com/read/3068235/12-perusahaan-inggris-minati-pengembangan-tod-di-jakarta>, published on 23 August 2017.

64 <http://properti.liputan6.com/read/2427696/proyek-lrt-pacu-pembangunan-apartemen-di-pinggiran-kota>, published on 3 February 2016.

65 <http://properti.liputan6.com/read/3076057/bisnis-sewa-apartemen-di-cikarang-tawarkan-untung-menggiurkan>, published on 30 August 2017.

terms of regulatory framework, BPN has enacted the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency No. 16 of 2017 on Guidelines of Transit Oriented Area Development, which sets out guidelines for the central government and regional government in determining and stipulating TOD location, and aims to ensure that a transit-oriented area will provide added value and create a healthy and positive business climate.

Furthermore, on 26 September 2016, the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency issued Regulation No. 29 of 2016 on the Procedure of Granting, Relinquishment, or Transfer of Rights of Ownership over a House or Residence of a Foreign Citizen Domiciled in Indonesia. In general, the regulation provides that, subject to certain requirements, a foreign citizen who validly possesses a stay permit may own an apartment unit with the Right to Use over that apartment unit. The regulation encompasses, among other things, the types of apartment unit that foreign citizens may own as well as the transfer and collateralisation of title over the apartment unit, and is aimed to provide greater legal certainty for foreign citizens.

## **VIII OUTLOOK AND CONCLUSIONS**

Despite growing investment in real estate in Indonesia, the complexity of the regulatory framework, on account of the inconsistencies and unclear regulatory provisions in many aspects of the industry, makes the real estate sector in Indonesia a rather challenging business.

The government's attempts to boost investment in the real estate sector by giving incentives to investors must be done in line with further improvements to the regulatory and enforcement system, by eliminating unclear requirements and unwritten policies. The government needs to synchronise all relevant regulations and strictly implement uniform conduct in relation to regulatory enforcement throughout the various government institutions, from the level of central to regional governments, to create an investment-friendly environment for investors.

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Before joining ABNR, he worked for a law firm and reputable insurance company in Indonesia. He also worked in the Netherlands, as foreign trainee with international legal and tax consultants in Rotterdam, and thereafter with a Dutch Bank in Amsterdam. He has extensive experience in matters involving corporate law, foreign investment, intellectual property and project finance, and has been actively involved in infrastructure projects in Indonesia. He was involved in the issuance of the PT KAI first corporate bond to finance the development of Soekarno-Hatta International Airport Integrated Railway, involving the ongoing financing of the LRT Jakarta Bogor Depok Bekasi Project with investment value of approximately 29.9 trillion rupiah, as well as in the development of 2x660MW Tanjung Jati, a coal-fired steam power plant in Cirebon. He was also involved in the issuance of US\$40 billion GMTN by the government of the Republic Indonesia. He is ranked by *IFLR1000* and *Asia Pacific Legal 500* in various practice areas.

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ISBN 978-1-83862-009-7