LAND ACQUISITION UNDER
INDONESIAN LAW IN A NUTSHELL

Seminar On Doing Business in Indonesia
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1. Introduction

Indonesian land law is very complex, reflecting customary (“adat”) law developed over hundreds of years at the village level, as modified by Dutch Colonial rule, with an overlayer of more recent central Government laws and regulations. The recent laws and regulations are an attempt to make Indonesia’s land law more usable for modern conditions without completely abandoning the communal concepts applicable to land in customary law, which communal concepts are also embodied in Indonesia’s constitution of 1945.

Most of the land in Indonesia is not registered with a Government land office, and thus most land is without a land certificate, which is the best evidence of title. Rights in unregistered (and thus uncertificated) land are based, in part, on unwritten law of the jurisdiction where the land is located and, accordingly, is different in different locations and often is quite deficient in legal certainty.

2. The Basic Agrarian Law of 1960

The Indonesian Government attempted to adapt its land law to modern needs through the adoption of Basic Agrarian Law No. 5 of 1960 (the “Agrarian Law”). Under the Agrarian Law, all rights on land are converted into a single system of new rights based on Custom Law (“Adat Law”) which is modified by principles introduced in the Agrarian Law. The Agrarian Law also introduces a new classification of land rights and extends to all land a system of registration which is to result in the issuance of a land certificate. As mentioned above, the Agrarian Law is superimposed on customary (“adat”) law.

Under the Agrarian Law, conceptually all land is governed by adat law as long as this customary law does not contravene public interest and the welfare of the nation. It is therefore the State that determines the proper use of land, the relationship between land and individuals or groups of individuals, and the consequences of legal actions concerning land.

A notable change effected by the Agrarian Law is to permit land rights to be held by individuals rather than in common by the community, which is the status mandated under adat law. However, the adat law principle that the community has the ultimate right to approve of the party to whom the land is transferred is continued under the Agrarian Law. This final approval right is exercised through the system by which the party with current rights in the land “relinquishes” these rights to the State with a request that those rights be conveyed by the State to a particular purchaser.
However, the Agrarian Law’s grant of the right to individuals to hold land ownership in their own names has undermined traditional communal land rights, as indeed the entire system of *adat* law has been seriously eroded by the Agrarian Law. Presently it is the general opinion that even in regions in which the Agrarian Law still has not been fully applied, land rights have become increasingly individualized. Notwithstanding the foregoing, failing unequivocal written evidence of *adat* title to land, a prospective purchaser should always obtain the endorsement of the Village ("*Lurah*") and Sub-District Heads ("*Camat*") as well as the government officials when acquiring title to land. The “*Adat*” land title is usually evidenced by documentary evidence of payment of land tax to the state such as *girik*, *pipil*, *pas* etc., which is comparable to the current Land and Building Tax (*Pajak Bumi dan Bangunan*/*PBB*).

In the absence of other ownership documentation, the PBB payment evidence which is supported by such as a Statement Letter of Holding of Land (*Surat Keterangan Tanah*/*SKT*) which is endorsed by the “*Lurah*” and “*Camat*”) is accepted as an indication of title when land rights must be established.

3. **Classification of Land Rights**

The Agrarian Law and its implementing regulations recognize several types of land rights, of which the following are the most important:

a. Hak Milik (Right of Ownership);
b. Hak Guna Bangunan (Right to Build);
c. Hak Guna Usaha (Right to Cultivate);
d. Hak Pakai (Right to Use);
e. Hak Pengelolaan (right to Administer/Manage).

While all of these rights allow the holder to utilize the land concerned, they differ in their duration, in the nature of utilization allowed and in the ability of the right to be used for security purposes. A brief summary of each of these land classification follows.

3.1. **Hak Milik/Right of Ownership**

This is the most extensive right available on Indonesian land, being unlimited in duration and utilization and available for hypothecation. This “Right of Ownership” is available only to individuals who are Indonesian citizens (natural persons). This Right of Ownership is conveyed by executing a deed before a Land Deed Office/Notary reflecting the desired transaction.
3.2. **Hak Guna Bangunan/Right to Build (“HGB”)**

A Hak Guna Bangunan title is the grant of a right in land for 30 years authorizing the holder to utilize the land and anything previously or thereafter build upon the land on an exclusive basis for that period. An HGB in principle can be extended for an additional 20 years after the expiration of the first 30, but so far the Government has always preferred to grant a new HGB title for 30 years to the granting of an extension of an existing title. Conceptually it is similar to a long-term ground lease in the common law system.

A HGB title may be held only by Indonesian citizens and Indonesian companies, including the foreign investment company (“PMA Company”), that have their legal domicile in Indonesia. The title may be transferred by executing a notarial deed before a PPAT (an official authorized to make land deeds). Any transfer must be registered with the National Land Office. An HGB title can be mortgaged by means of a Hak Tanggungan.

3.3. **Hak Guna Usaha (the Right to Cultivate)**

The Hak Guna Usaha (“HGU”) is a right that is generally issued on government-owned land to Indonesian individuals or legal entities, including PMA companies, for agriculture purposes. Its term is usually 35 years at the most, with a possible extension of 25 years. The HGU may be used for security purposes by way of the execution of the granting of a Hak Tanggungan (mortgage). Upon the expiration of its term, the holder may apply for a renewal of the land title for a period of 35 years at the most.

3.4. **Hak Pakai (Right of Use)**

This is subsidiary right in land which may be granted by the holder of any of the land rights mentioned above. The Hak Pakai is the right to use and/or to collect products from the land. The Hak Pakai is limited in duration by the contract or decree, as the case may be. The granting of this right is usually for a 25 years at the most, with extension possibilities of 20 years at the most, and is ordinarily subject to specific restrictions on the intended use of the land. Indonesian citizens, PMA companies, foreign individuals residing in Indonesia, representatives office of foreign entities, representatives office of foreign countries, International institutions, Social and Religious institutions, and Government (including local government), may posses a Right of Use over land. Because foreign residents may own a Hak Pakai, this right is often obtained for the development of condominiums.
3.5. **Hak Pengelolaan (Right to Administer/Manage)**

A *Hak Pengelolaan*, or “right to manage”, is granted to governmental authorities, state agencies and state enterprises, to administer government land. The holder of a *Hak Pengelolaan* may grant a right to use the land, either *Hak Guna Bangunan* or the *Hak Pakai*, without diminishing its right to manage the land. A Right to Manage is not available for security purposes.

Land titles are evidenced by the issuance of certificates of land titles by the relevant Land Office. The rights mentioned above are the basis for any transaction concerning land. Any purchase, lease, rent or any other types of transaction will involve one of these titles. In other words, land titles are rights on land held and/or owned by a person or entity which can be transferred to other person or entity.

Even thought the *Hak Pengelolaan* is not specifically mentioned in the Agrarian Law, the government has as a matter of fact granted this right to a number of government institutions involving in large scale of infrastructure such as harbours and housing.

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4. **Imposition of Security**

Except for the *Hak Pengelolaan*, all of the land titles mentioned above can be used for the purpose of securing the payment of an obligation, which is done by way of the execution of an agreement for the granting of a *Hak Tanggungan* (mortgage).

5. **Registration of Land Titles**

5.1. Government Regulation No. 24 of 1997, imposes to land right holders the obligation to register their land rights. In spite of the requirement, as we mentioned above, the fact is that most of the land in Indonesia is not currently registered.

5.2. Although of privately held land located in urban areas are now properly registered and documented under the procedures stipulated by the Agrarian Law, most of the privately held land in rural areas are not. Often the only documentation available to support a claim of right is the so-called “*girik*” right, which is actually a land tax receipt and not evidence of title, but which often taken into consideration in establishing title to land.
6. **Procedures to Transfer Land Title**

The various procedures are described in brief terms below.

6.1. **Location Permit**

Pursuant to the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 02/1999, a PMA Company who wishes to acquire a land title in its name must first of all obtain a Location Permit, which is a permit for the acquisition of land for a certain usage, which usage must be in line with the designation set forth in the spatial layout of the region concerned. The Location Permit as valid for a period of 1 (one) year, with a possibility for another 1 (one) year extension (provided that 50% of the land area has been validly acquired).

To obtain a Location Permit, an application therefor must be submitted to the Local Government, along with, among others, the following supporting documents:

1. Company Investment License (BKPM approval);
2. A sketch of the location of the land concerned;
3. The description of the purpose project or plant to be constructed.

The holder of a Location Permit has a priority, but not an exclusive, right to acquire the land in the designated area. In principle, the original land owner still has the freedom to sell its land to any other interested party.

6.2. **Deed of Relinquishment**

Following the issuance of the Location Permit, the Company concerned has a period of 12 (twelve) months to arrange for the relinquishment or release of the land concerned by the land owners (who either hold a certificate for the land ownership or not), for which a deed of relinquishment will need to be executed before a land deed officer who could be a notary or a *Camat* or the Head of the Land Office of the *Kabupaten* (Regency under which jurisdiction the land concerned is located).

Upon the execution of the deed of relinquishment, the Company could proceed with the submission of its application for a land title.
These individual land owners cannot directly transfer the land to a company. To change the original “right of ownership” into one of the titles as mentioned above, the original land owner must first relinquish his/her ownership right in the land to the State (the State is deemed as the ultimate holder of all land in Indonesia), for the benefit of the purchaser (the Company), by executing a deed of relinquishment of land. By the execution of this deed, the land concerned becomes state land.

Alternatively, if the landowners own a Right of Ownership Certificate, a degradation of the Right of Ownership into a Right to Build may be arranged first, causing the issue of the Right to Build in the respective landowner’s name. Thereafter, the Purchaser (Company) and the landowners may enter into a Deed of Sale and Purchase of Land before a land deed official (who is normally also a notary). This Deed will constitute the legal transfer of the land, resulting in that the further procedures below will not be necessary.

6.3. Application for a land title

Following the execution of the deed of relinquishment, the PMA Company may proceed with the submission of its application for a land title to the related land office.

6.4. Granting the Land title

Following its receipt of the land title application, the related Land Office will usually proceed with measuring the extent of the land in question, and examining the pertaining documents.

6.5. Certificate of land title in the name of the Company

Upon the fulfillment of all of the required conditions, including the submission of the original evidence of the retribution payment/administration fee and any other fees, the Head of Local Land Office (Kabupaten level) will execute the registration of the land and issue the registration certificate in the name of Company.

We wish to mention that with the enactment of Law 32/2004 that revokes regarding Regional Authority Law 22/1999, it is possible that the Local Government will impose additional requirements to PMA companies applying for land titles.
6.6. **Building License**

After the legal title is obtained in the manner described above, the PMA Company is required to obtain various licenses (other than pertaining to the land), such as Hindrance Ordinance.

7. **Procurement of Land for Public Interest**

In 2006, the Government issued Presidential Regulation No. 65 of 2006 on the Procurement of Land for Development for Public Interest Purposes which amended Presidential Regulations No. 36 of 2005 (“Regulation No. 65”), purportedly to increase the level of transparency and the degree of respect for the rights of land title holders.

It is interesting to note that Regulation No. 65 concerns land acquisition for public interest development carried out by the Central Government or Local Government, and does not stipulate acquisition of land for infrastructure projects by the private sectors.

The background of this Regulation is the government’s intention to accelerate the development of infrastructure projects that are funded by foreign investors, considering that the currently prevailing procedures of land acquisition are complicated and may discourage these investors.

The acquisition of land by the government for public interest purposes with certain compensation amount to the “land owners” is done by way of (i) the relinquishment of the land right concerned by the landowner; or (ii) the delivery land title by the government.

Article 5 of Regulation No. 65 lists 7 (seven) public interest development areas that may be used as a basis to procure land and use it for such public interest development, such as the development of roads, tolls, railways, ports, airports, train stations, power generations, nature and culture reserves and many more others things.

In 2007, as an implementing regulation of Regulation No. 65, the Head of the Land Agency office issued Regulation of the Land Agency Office No. 3 of 2007 dated May 21, 2007, setting forth the procedures for the acquisition land to for public interest purposes.
Closing Remarks

The above is a discussion of the legislation pertaining to land acquisition in Indonesia. Needless to say, this can be extended to cover other regulations pertaining to specific land issues. For any Service in this regard we may extend to you, please contact the undersigned either by phone or by e-mail.

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