

ABOUT THE PROPERTY LAWS IN THE REPUBLIC OF INDONESIA

All property matters, excepts for those pertaining to the mining and forestry sectors fall under the jurisdiction of the national land agency (Badan Pertanahan Nasional, or BPN for short), which was formed to administer all matters relating to the basic “Agrarian Law of 1960”, such as the registration of the use of land. The Indonesian land legislation is based on the basic agrarian law number 5 of 1960.

The Basic Agrarian Law recognizes several types of rights over real estate, all of which are outlined below. However, to the foreign investor the following three main rights are relevant:

- 1.Right of Exploitation (Hak Guna Usaha, HGU)
- 1.Right of Building (Hak Guna Bangunan, HGB)
- 1.Right of Use (Hak Pakai)

These rights all authorize the use of land. The difference lies in the duration of validity and nature of utilization and the opportunities for obtaining a mortgage. The right of ownership is an inheritable right that can be held only by Indonesian citizens.

RIGHT OF OWNERSHIP: (Hak Milik)

This refers to absolute ownership of land and corresponds to freehold title in common law terms. This right can only be held by an Indonesian citizen, not a corporate entity whether local or foreign. Certain legal entities designated by the government, such as a state bank, agricultural cooperatives, religious bodies, and social right of ownership is held in perpetuity. It can be sold, transferred, bequeathed, and mortgaged.

RIGHT TO RENT: (Hak Sewa)

This is the right to use, leasing land owned by another private party for building purposes. The right cannot be registered at the land office and therefore does not exist in certificate form. Land leases are not public documents.

The law does not stipulate a period for such lease agreements and whether this can be transferred or not depends on the original agreement between the parties (lessor and lessee). This right may be held by a foreigner permanently domiciled in Indonesian or a foreign legal entity having a representative office in Indonesia, and may not be mortgaged.

RIGHT TO BUILD: (Hak Guna Bangunan)

Better to know by its abbreviation, “H.G.B”, this is the right to construct a building/s

on a plot of land for a period of 20 or 30 years, and which can be renewed on consideration of policy of the regional government. This right can be sold, exchanged, transferred, and mortgaged, and can be held directly by any corporate entity whether it is local company or government approved PMA (joint venture) company.

If a joint venture company needs a land for a factory, storage, employee housing or whatever, the company can be granted the right of building (HGB) in accordance with existing regulations.

RIGHT TO USE: (Hak Pakai)

This is the right of use over state-owned (crown land) or property owned by public or private persons/entities for a specific purpose for (generally) a finite period and occasionally for an indefinite period. This land right may not be sold, exchanged or transferred unless explicitly stated in an agreement.

Hak Pakai may be held by an Indonesian individual or entity and or foreigner permanently domiciled in Indonesia, or a foreign legal entity with a representative office in Indonesia such as foreign banks, embassies, etc.

RIGHT OF EXPLOITATION: (Hak Guna Usaha)

This is the right to exploit state-owned land for agricultural, fishery or animal husbandry purposes. Title is normally granted for a period of 35 years, which may be extended for a maximum of 25 more years, conditional that the company is still operational and sound. This right can be held by an Indonesian individuals/entities as well as government approved PMA (foreign joint venture) companies, and may be mortgaged.

Foreign investors who have obtained mining rights from the Minister of Mines and Energy or exploitation rights from the Minister of Agriculture or the Minister of Forestry have automatically obtained the right to use the land within their concession boundaries for purposes directly connected with the operations of the enterprise/s.

Based on Presidential decree number 34 of 1992 concerning the useful of Right of Exploitation (HGU) and the Right of Building (HGB) for the joint venture company, stated that in the joint venture company that established on Indonesian law and domiciled in Indonesia. Those HGU that kept by the joint venture company can be used as collateral and can be transferred after having permission by the Chairman of BPN.