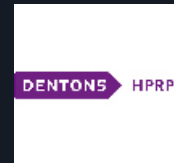


Legal 500 Country Comparative Guides 2024

Indonesia Real Estate

Contributor



Hanafiah Ponggawa &
Partners – Dentons
HPRP

Al Hakim Hanafiah

Partner | alhakim.hanafiah@dentons.com

Trijoyo Ariwibowo

Partner | trijoyo.ariwibowo@dentons.com

Hilwa Az-Zahra Adwani

Associate | hilwa.adwani@dentons.com

Gregorius Alisander Ponglapik

Associate | gregorius.ponglapik@dentons.com

This country-specific Q&A provides an overview of real estate laws and regulations applicable in Indonesia.

For a full list of jurisdictional Q&As visit legal500.com/guides

Indonesia: Real Estate

1. Overview

In Indonesia, the Government holds title to all land under Law No. 5 of 1960 on Basic Agrarian Principles (the "Agrarian Law"). Anyone who wishes to use land must obtain a land title from the Government. Most land titles granted by the Government have a fixed duration, which may be extended provided the holder meets the extension and renewal requirements and there are no zoning changes or other public interest considerations.

2. What is the main legislation relating to real estate ownership?

The main legislation governing real estate ownership in Indonesia is the Agrarian Law. The Agrarian Law establishes the fundamental principles of Indonesia's national agrarian system, including provisions on land ownership, types of land rights, the mechanisms and system for land registration, as well as criminal sanctions for violations related to land ownership.

However, with the development of the land regime and the evolving needs of land regulations in Indonesia, the Government of the Republic of Indonesia has enacted several related laws and regulations, including:

- a. Law No. 12 of 1985 on Land and Building Taxes as amended by Law No. 12 of 1994 (Land and Building Taxes Law);
- b. Law No. 4 of 1996 on Mortgage on Land and Land-Related Objects ("**Land Mortgage Law**");
- c. Law No. 28 of 2022 on Building as amended by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation (which has been stipulated as law with Law No. 6 of 2023) ("**Omnibus Law**") ("**Building Law**");
- d. Law No. 26 of 2007 on Spatial Planning as amended by Omnibus Law ("**Spatial Planning Law**");
- e. Law No. 20 of 2011 on Apartments as amended by Omnibus Law (Apartments Law); and
- f. Law No. 2 of 2017 on Construction Services as amended by Omnibus Law ("**Construction Law**").

In addition to the aforementioned laws, these are supplemented and implemented by their respective regulations, including but not limited to:

- a. Government Regulation No. 24 of 1997 on Land

Registration as partially revoked by Government Regulation No. 18 of 2021 on the Right to Manage Land, Land Rights, Apartment Units, and Land Registration ("**GR 18/2021**") ("**GR 24/1997**");

- b. Government Regulation No. 14 of 2016 on Implementation of Housing and Housing Areas as amended by Government Regulation No. 12 of 2021 (GR 14/2016);
- c. Government Regulation No. 22 of 2020 on Implementing Regulation of Construction Law as amended by Government Regulation No. 14 of 2021 (GR 22/2020);
- d. Government Regulation No. 13 of 2021 on Implementation of Apartments (GR 13/2021);
- e. Government Regulation No. 16 of 2021 on Implementing Regulation of Building Law ("**GR 16/2021**")
- f. GR 18/2021;
- g. Government Regulation No. 21 of 2021 on Implementation of Spatial Planning (GR 21/2021);
- h. Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency ("**MOA**") Regulation No. 3 of 1997 on Implementing Regulation of GR 24/1997 as amended several times and lastly by MOA Regulation No. 16/2021 (MOA Reg 3/1997);
- i. MOA Regulation No. 5 of 2020 on Electronic Integration of Mortgage Services (MOA Reg 5/2020);
- j. MOA Regulation No. 12 of 2021 on Land Technical Considerations (MOA Reg 12/2021);
- k. MOA Regulation No. 13 of 2021 on Implementation of Space Utilization Confirmation and Synchronization of Space Utilization Program (MOA Reg 13/2021);
- l. MOA Regulation No. 20 of 2021 on Procedures of Control of Neglected Land (MOA Reg 20/2021); and
- m. MOA Regulation No. 3 of 2023 on the Issuance of Electronic Documents in Land Registration Activities ("**MOA Reg 3/2023**").

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2023 or are there any major anticipated new laws which are expected to materially impact them in the near future?

Yes, several new laws and regulations introduced since December 2023, or expected in the near future, are likely

to impact real estate investors and lenders, among others:

A. E-Certificate for Land Ownership

The introduction of e-certificates digitalizes land registration. Electronic certificates are now part of the land registration process under MOA Reg 3/2023, with implementation seen in practice since 2024.

For investors, this improves transparency, facilitates inventory management, and reduces the risk of land ownership disputes. However, investors must ensure their property records are updated to align with the electronic registration system.

For lenders, e-certificates simplify the process of verifying land ownership, particularly when securing loans with land as collateral. The digital format enhances reliability in ownership verification, reducing the risk of fraud or disputes.

B. Moratorium on Land Development in Bali

Bali, a popular tourist destination in Indonesia, faces issues of overcrowding and environmental degradation due to overtourism. To address these concerns, the Decree of the Coordinating Minister for Maritime and Investment Affairs No. 163 of 2024 on the Task Force for Quality Tourism Implementation in Bali Province has imposed a moratorium on new business licenses for hotels, villas, and beach clubs in Denpasar, Badung, Gianyar, Tabanan (Sarbagita), and Nusa Penida areas. This includes restrictions on land conversion.

For investors, this moratorium necessitates careful evaluation of investment locations and project viability, as it limits opportunities in prime tourist areas.

For lenders, the moratorium introduces additional risks, as they must assess whether their financed projects are affected. These restrictions could impact the ability to generate returns from investments in the affected areas.

Anticipated changes in the future include stricter sustainability requirements, potentially causing stricter requirements to obtain permits and delays, and an increase in Value Added Tax/*Pajak Pertambahan Nilai* ("VAT") on selling price with regard real estate purchases in Indonesia to 12%, raising the tax burden on buyers.

4. How is ownership of real estate proved and are ownership records available for public inspection?

The primary proof of legal ownership of real estate in Indonesia is the land title certificate issued by the National Land Office/*Badan Pertanahan Negara* ("BPN"). All land in Indonesia must be registered with the BPN. This requirement is reinforced by GR 18/2021, which mandates that former customary land owned by individuals must be registered within five years of its enactment. After this period, any written evidence of former customary land will become invalid as proof of land rights and can only serve as a reference for land registration.

Land titles are registered with the BPN, except for land held under a Right to Lease. A reliable source of information on land title ownership is through conducting land searches, which are carried out online by submitting a request to the relevant BPN office. This process must be performed by a land conveyancer with jurisdiction over the location of the land or by the landowner themselves, based on a power of attorney from the landowner.

It is important to note that land searches can only be conducted for registered (certificated) land.

5. Are there any restrictions on who can own real estate, including ownership by any foreign entities?

Yes, there are such restrictions.

Foreigners and foreign entities can only acquire the following type of land titles:

A. Right to Use/*Hak Pakai* ("HP") for a certain period of time

HP is the right to use and/or collect the products from the land. HP land title is divided into two categories, namely (i) for a certain period of time and (ii) for an unspecified period of time.

Foreigners can only own HP land title for a certain period of time. HP land title for a certain period of time can also be granted to foreign legal entities with representatives in Indonesia. HP land title can be granted over state land, Right to Own/*Hak Milik* ("HM") land title or Right to Manage/*Hak Pengelolaan* ("HPL") land title.

HP land title for a certain period of time can be granted for a maximum of 30 years, which can be extended by 20 years. After the term of the extension expires, the HP land title can be renewed for a maximum of 30 years.

B. Right of Ownership Over an Apartment Unit/*Hak Milik atas Satuan Rumah Susun* ("HMSRS")

HMSRS is a title over a unit is called a right of ownership over an apartment unit and is evidenced by an HMSRS certificate to the issued by the BPN where the strata title is located. The validity period of the strata title will follow the underlying land title.

HMSRS covers an individual right of ownership over the unit to be used separately for residential purposes or for other activities, and common rights over the parts and structures of the apartment, the common land where the apartment is constructed, facilities constructed over the common land.

However, HMSRS can only be owned by foreigners if the strata titles are built in (i) specific economic zones, (ii) free trade and free port zones, (iii) industrial zones and (iv) other economic zones.

C. Right to Lease/*Hak Sewa*

Right to Lease is a land title that gives its holder the right to construct a building on another person's land, upon payment of rent. Right to Lease is granted through lease agreements. Right to Lease is a secondary or derivative title granted by a holder of a land title and is not currently registrable as it may be in other countries with more sophisticated land title systems. The term of Right to Lease is commonly based on agreement between the landlord and the tenant. We have seen leases over land granted for 25 and 50 years.

Foreign entities can lease real estate from a legal perspective but there may be tax ramifications if the foreign company is deemed to have a permanent establishment in Indonesia.

As below we provide the relevant classification for the ease of reference:

Land title	eligible for foreigners or foreign entities		
	domiciled in Indonesia	residing in Indonesia	having representative in Indonesia
HM	No	No	No
HGB	No	No	No
HPL	No	No	No
HP for a certain period of time	Yes	Yes	Yes
HP for unspecified period of time	No	No	No
Right to Lease	Yes	Yes	Yes
HMSRS	Yes - with stay permits or other immigration documents	Yes - with stay permits or other immigration documents	Yes

6. What types of proprietary interests in real

estate can be created?

According to the Agrarian Law and its implementing regulations, the main types of land title ownership are as follows:

- HM;
- HGB;
- HP;
- HPL;
- HMSRS; and
- Right to Lease (based on a contractual agreement).

The most appropriate and common land title to be held by any company in Indonesia would be HGB. HGB title is a land right which allows the holder to establish and own buildings on a plot of land. However, HGB itself does not authorize the landowner to begin construction over the land, as there is a license for such purpose (i.e., Building Approval/*Persetujuan Bangunan Gedung*). A HGB title can be encumbered for security purposes and is bankable.

HGB may be granted to:

- Indonesian citizens; and
- Indonesian corporate entities established under Indonesian law and domiciled in Indonesia, including foreign investment companies.

HGB is granted for a maximum period of 30 years and can be extended for an additional maximum period of 20 years. A holder of HGB can also renew this land right for a subsequent period of 30 years after the term of the extension expires.

Please note that land certification in Indonesia only shows basic information on the registered owner of the land, details of the land itself and history of land security and land transfers – it does not show any information on third party rights or easements or leases, which are not registrable in Indonesia (therefore, only contractual in nature).

7. Is ownership of real estate and the buildings on it separate?

Yes. It is common to find that owners of a land may not be owners of a building constructed above it as the Indonesian Law adheres to the horizontal separation theory, where land and building ownership is separated. Although it is possible in theory, currently, there is no building ownership certificate issued in Indonesia for

non-strata buildings. Therefore, the separation can only be governed between the parties and evidenced in a contractual arrangement.

8. What are common ownership structures for ownership of commercial real estate?

Common structures for ownership of commercial real estate include the following:

a. Acquisition of Shares in a Land-Owning Company

In this structure, the company acquires shares in an existing land-owning company, typically established by a local partner. This approach helps avoid the complexities of setting up a new company or acquiring land directly. The acquisition can take place onshore (within Indonesia) or offshore (outside Indonesia), depending on the ownership structure and jurisdiction of the target company. However, the company may need to acquire shares at a certain premium, depending on the work already done by the local partner. This structure requires thorough due diligence on both the company and the land.

b. Joint Venture to Acquire Land from the Local Partner

A new joint venture company is formed to acquire land directly from the local partner. This structure avoids potential liabilities from an existing company and allows the company to have control over the acquisition and licensing process. However, there is a risk that the land acquisition may not be completed due to issues such as zoning or certification problems. Both parties inject equity into the joint venture, and the joint venture agreement is signed at the beginning of the process.

c. Joint Venture with Land Injection as Equity

In this structure, a new joint venture company is formed, and the local partner contributes land as equity. This avoids past liabilities associated with acquiring shares in an existing company and gives the company control over the process. The agreement is signed after due diligence on the land is completed. The land must be independently valued, and the valuation report is submitted for approval to determine the local partner's share in the joint venture.

Each of these structures offers different levels of control, investment, and risk, and careful due diligence is essential to ensure the success of the real estate transaction.

In addition, the occupation of commercial real estate can also be conducted by entering into a lease agreement.

Under the Agrarian Law, the lease of land or property should be made by way of a lease agreement with the landowner, but it is silent as to the format and mandatory terms and conditions of a lease agreement, except the provision which stipulates that the payment of a lease fee can be made in a lump sum payment before or after the lease period or in instalments on specified dates during the lease period. For the rest of the terms and conditions of the agreement, freedom of contract principles apply, and the parties to a lease agreement will be bound to what have been agreed in the lease agreement.

Despite the foregoing, lease agreements are subject to the general requirements of a valid contract (consent, legal capacity of the parties, object and lawful cause). There is no limitation on the duration of the lease term imposed by law, only that the lease term itself must be set out in the lease agreement.

Based on our experience, we have seen lease agreements over land granted for 25 and 50 years (depending also on the underlying land titles). Accordingly, lease agreements can provide more flexibility to the parties.

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

Generally, the due diligence is conducted by requesting documents and information relevant to the real property that will be acquired. However, the documents and information requested will vary depending on the type of title.

For a general overview, the standard scopes of review are as follows:

- a. corporate documents and records;
- b. documents regarding the commissioners and directors of the company (if the real property is owned by Indonesian legal entity);
- c. land documents;
- d. documents regarding the location and zoning of the real property;
- e. material contracts and secured assets;
- f. environmental licenses;
- g. documents regarding the litigation concerning the company and its properties (if any); and
- h. land search and court search regarding real property.

Additionally, it may be necessary to check with relevant local authorities and gather information regarding rumours or unofficial reports that could affect the transaction. This part of the due diligence is also crucial

to ensure that the property is free from potential legal, operational or reputational risks.

10. What legal issues (if any) are outside the scope of the usual legal due diligence process on an acquisition of real estate?

Due diligence on environment matters, building parameters, technical issues and investigation work cannot be done by lawyers and the client must appoint a different third-party consultant.

Specifically, environmental consultants are needed to check soil conditions where the land is to be purchased and a building will be built and an engineer or architect are needed to assess the building's condition (if not purchased on vacant land) to ensure compliance of the actual condition with the technical specifications, blueprints, and site plan requirements submitted to the relevant authorities by the existing landowner.

11. What is the usual process for transfer of real estate, and when does liability pass to the buyer?

In broad terms, the transfer of a real estate process is as follows:

- a. sign a letter of intent and a conditional purchase agreement;
- b. appoint a Land Conveyancer/*Pejabat Pembuat Akta Tanah* ("PPAT") who has the authority to prepare a land transfer deed/*akta jual beli* ("AJB") and register the relevant land;
- c. establish a foreign investment company to hold the land title (relevant if the title is HGB title);
- d. fulfill the conditions precedent subject to the buyer's needs, commercial intentions and purchase locations such as industrial estate, economic zones or other locations (e.g., conducting due diligence and land searches, obtaining a location permit or land transfer approval, zoning approval, splitting of title, extension of title, and amalgamation of title);
- e. sign the AJB in a notarial deed form in front of the PPAT (once all conditions precedent are fulfilled) upon which purchase price and land transfer taxes must be fully paid; and
- f. apply for a registration of the land transfer, assisted by the PPAT (issuance of a new or updating an existing land title certificate).

A typical purchase of land takes around 2 – 4 months (until closing – signing of a land sale and purchase deed) subject to whether there are any regulatory conditions

precedent, whether the purchaser already has a foreign investment company established in Indonesia and whether negotiations are protracted negotiations. Note that post closing registration (i.e., updating the land title certificate) may take at least 2 – 3 months.

The liability passes to the buyer upon the signing of the land transfer deed in front of a land notary. However, it is common practice to include a provision in the conditional sale and purchase agreement stating that the seller's liability will remain in effect for a specified period. This ensures the seller is accountable for any liabilities arising from the land that are attributable to them (such as false representations or warranties).

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Yes, it is common.

This is given the Land and Building Rights Acquisition Duty/*Bea Perolehan Hak Atas Tanah* ("BPHTB") of up to 5% of the selling price applicable to the buyer and the 2.5% Income Tax/*Pajak Penghasilan* ("PPH") on the selling price applicable to the seller in a real estate transaction. Additionally, a VAT of 11% on the purchase price is also imposed on the buyer and as previously explained, there is a possibility that the VAT will increase to 12% in 2025.

Other than the above tax fees, please also note that there are also additional fees in the form of PPAT fees including fee for the preparation and signing of the AJB that will be borne by the buyer with a cap of maximum 0.3-0.6% of the selling price and BPN related fees for the registration of AJB and the change of name in HGB into the name of buyer, including but not limited to Non-Tax State Revenue/*Bea Penerimaan Negara Bukan Pajak* based on Zone Rate of Land/*Zona Nilai Tanah* from BPN will be borne by the buyer.

Therefore, as there are several taxes imposed from direct purchase of real estate, it is common that real estate transfer is effected through shares transfer which include asset transfer as such transaction do not incur as much tax as direct purchase of real estate and for shares transfer, tax is only incurred by the seller of the shares. Nevertheless, for tax-related issues, a separate tax advice needs to be obtained from a tax consultant.

13. On the sale of freehold interests in land does

the benefit of any occupational leases and income derived from such lettings automatically transfer to the buyer?

Yes. The benefit of any occupational leases and the income derived from such lettings generally does transfer to the buyer upon the sale of freehold interests in land, unless the sale agreement specifies otherwise. Typically, leases are considered part of the property rights being transferred, meaning the buyer assumes responsibility for existing leases and receives any rental income. However, this will be subject to the commercial intention of the parties.

In addition to the key provisions above, there is also the legal principle of "*koop breekt geen huur*" (sale does not break lease) in accordance with Article 1576 of the Indonesian Civil Code. This principle essentially states that the sale of a property does not terminate a pre-existing lease agreement, unless otherwise stipulated in the lease and also acts as a protection for a good faith third party tenant. Therefore, it is crucial for the landlord and tenant to clearly address in the lease agreement whether, in the event of a sale to a new landowner, the lease will remain in effect or be terminated.

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

The only interest that can be recorded in the BPN is the title itself (i.e., the signed land transfer deed by the parties) and land mortgage (*hak tanggungan*).

Land Mortgages Law defines a *hak tanggungan* as a security right over a land right, which could include objects that are inseparable from the land (such as buildings, plants, etc.), for settlement of debt. This security right grants a preferred position to certain creditor(s) vis a vis other creditors.

The BPN registers the *hak tanggungan* in the Land Mortgage Book/*Buku Tanah Hak Tanggungan* on the seventh day after it receives a complete application. The *hak tanggungan* comes into existence on the date the *hak tanggungan* is registered in the *hak tanggungan* land book. On this date, the *hak tanggungan* is perfected and the mortgagee becomes a preferred creditor. As evidence of the registration of *hak tanggungan*, the BPN issues a Certificate of Land Mortgage/*Sertifikat Hak Tanggungan* ("**SHT**") to the mortgagee.

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised?

No. In general, Indonesian law does not recognize the concept of a beneficial owner. Specifically, the Agrarian Law and its implementing regulations do not recognize the concepts of beneficial ownership or trust in relation to land rights. Instead, Indonesia's land regime recognizes only the name of the owner recorded on the land certificate (as the sole evidence of land ownership) as the legal owner of the land rights.

16. Is public disclosure of the ultimate beneficial owners of real estate required?

Not applicable, as there is no recognition of the concepts of beneficial ownership or trust in relation to land rights under the Agrarian Law and its implementing regulations.

17. What are the main taxes associated with real estate ownership and transfer of real estate?

Ownership of real estate is subject to Land and Building Tax/*Pajak Bumi dan Bangunan* ("**PBB**"), a tax imposed on individuals, companies, or organizations that have rights to, or derive benefits from, land or buildings. The PBB is calculated based on the government's estimated Tax Object Sales Value/*Nilai Jual Objek Pajak* ("**NJOP**") for land and buildings, as determined by the regional government. The current PBB rate is 0.5% of the Taxable Sales Value/*Nilai Jual Kena Pajak* (NJKP), which is calculated from 20% to 100% of the NJOP, minus the Non-Taxable Tax Object Sales Value/*Nilai Jual Objek Pajak Tidak Kena Pajak* ("**NJOPTKP**"), varies depending on the stipulations of the local government of the NJOPTKP applicable in their region. PBB is payable annually, based on the Notification Letter of Payable Tax/*Surat Pemberitahuan Pajak Terutang* (SPPT) issued by the regional government.

In relation to the transfer of land and building rights, the seller is subject to PPH of 2.5% on the purchase price stated in the AJB or known as Tax Object Acquisition Value/*Nilai Perolehan Objek Pajak* (NPOP), while the buyer is subject to BPHTB at a maximum rate of 5% of the NPOP, minus the non-taxable value of the land and/or buildings, known as the Non-Taxable Tax Object Acquisition Value/*Nilai Perolehan Objek Pajak Tidak Kena Pajak* (NPOPTKP). The amount of BPHTB varies depending on the regulations set by the local government in each region where the land is located, but the maximum rate is 5%.

In addition, there is another type of state revenue, besides taxes, called Non-Tax State Revenue/*Penerimaan Negara Bukan Pajak* (PNBP), which must be paid to the BPN for administering the issuance of certificates resulting from transfers of real estate ownership. This includes, but is not limited to, land surveys, measurements, and technical land considerations conducted by the BPN.

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

Under Indonesian law, the Agrarian Law and its implementing regulations do not require specific terms to be included in a lease agreement. The only mandatory provision is that the payment of lease fees may be made as a lump sum either before or after the lease period, or in installments on specified dates during the lease period.

As a result, leasing in Indonesia is primarily a contractual arrangement between the landlord (lessor) and tenant (lessee). However, in line with best practices, the following provisions are typically included in lease agreements:

- a. intended use of the leased property;
- b. duration of the lease, including start and end dates, as well as the mechanism for any renewal or termination provisions;
- c. agreed rent and payment schedule, including conditions that may affect changes in rent;
- d. rights and obligations of the landlord and tenant, including provisions related to whether there is a right to assign or grant sub-leases to a sub-tenant, as well as the right to offer the property to the tenant in the event of a sale;
- e. actions of the tenant that require approval from or notification to the landlord (e.g., renovations, alterations, or modifications of the property for the tenant's benefit);
- f. restrictions on the landlord and tenant during the lease period;
- g. expenses to be borne by the landlord and tenant in relation to the lease (e.g., maintenance fees, taxes, etc.); and
- h. liabilities to be borne by the tenant during the lease period (e.g., estate management fees, other operational costs, etc.).

It is also important to include provisions ensuring the tenant's right to quiet enjoyment of the property during the lease period. These provisions guarantee that the tenant can occupy and use the leased property without interference or disturbance from the landlord or third

parties. Key aspects typically addressed include:

- a. the landlord cannot interfere with the tenant's lawful use of the property, such as entering the premises without proper notice or causing disruptions that prevent the tenant from fully utilizing the property;
- b. the tenant's rights are not infringed upon by other tenants;
- c. the tenant is entitled to enjoy the property without the threat of third-party claims that could interfere with their use, such as competing claims of ownership over the property; and
- d. the landlord's obligation to maintain the property and ensure that it is free from nuisances or situations that might disrupt the tenant's peaceful occupation during the lease period.

In addition, the principle of "*koop breekt geen huur*" (sale does not break lease) must be referenced. This principle ensures that tenants are legally protected even if the landlord sells the property to a third party. The tenant's rights under the lease agreement remain valid and enforceable, binding the new owner of the property.

By addressing these provisions, a lease agreement can provide clarity, protect both parties' interests, and ensure compliance with legal and practical expectations.

19. What remedies are commonly available for landlords in the event of a tenant breach of a commercial lease?

Typically, the remedy clause under the lease will specify that the remedies provided for landlord are not exclusive and do not limit any other remedies that may be available under the law. In the event of a breach of lease or default, the landlord may exercise the dispute resolution provisions outlined in the lease. This could include initiating deliberations with the tenant to reach a consensus. If necessary, the dispute may proceed to the agreed-upon dispute resolution forum, such as arbitration or a district court.

Additionally, the lease typically requires the tenant to deposit a security deposit, which is refundable if there is no breach of the lease by the end of lease period. In the event of a default, the landlord may apply the security deposit to compensate or indemnify for damages or losses resulting from the tenant's breach. However, this must be in accordance with the provisions outlined in the lease, particularly with respect to the conditions under which the security deposit may be applied in the event of a breach.

20. How are use, planning and zoning restrictions on real estate regulated?

The Spatial Planning Law dan GR 20/2021 governs the utilization of Indonesia's territory (land, water, and air) at the national, provincial, and regional levels. The law outlines the concepts and guidelines for the preparation, implementation, and monitoring of spatial planning across Indonesia's territory. According to the Spatial Planning Law, the central government is authorized to establish the norms, standards, and criteria for spatial planning, which can then be implemented by local governments (provincial and regional governments).

Furthermore, local governments are required to issue a Detailed Spatial Plan/*Rencana Detail Tata Ruang* ("RDTR") in a digital format that is easily accessible to the general public. The central government will integrate the RDTR with the Online Single Submission ("OSS") system. This integration allows businesses to confirm whether their activities can be carried out in a particular location as part of the process for obtaining a business license in the form of a Space Utilization Conformity Approval/*Kesesuaian Kegiatan Pemanfaatan Ruang* (KKPR) (previously known as a location permit). In the absence of an RDTR for a desired location, businesses may request approval from the central government to proceed with the proposed land utilization in the area.

21. Who can be liable for environmental contamination on real estate?

For hazardous waste, both the landlord or landowner and tenant are subject to strict liability. Under Law No. 32 of 2009 on the Protection and Management of the Environment as lastly amended by Omnibus Law, any individual or entity whose actions, business, and/or activities involve the use, production, and/or management of hazardous waste, or that pose a significant threat to the environment, is strictly liable for any resulting damage. This liability applies regardless of whether fault is proven.

For non-hazardous waste, the polluter-pays principle applies, meaning that any entity whose business or activities cause pollution is responsible for covering the recovery costs.

22. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance

levels need to be met?

While Indonesia does not have a specific law mandating energy performance assessments for all buildings, there are several regulations and initiatives promoting energy efficiency in the building sector, among others the Building Law, GR 16/2021, Minister of Environment Regulation No. 8 of 2010 on Criteria and Certification of Environmentally Friendly Buildings ("MOE Reg 8/2010"), and Minister of Public Works and Public Housing Regulation No. 21 of 2021 on Performance Assessment of Green Buildings.

GR 16/2021 provides that a green building is a building that meets technical building standards and demonstrates measurable performance in energy, water, and resource conservation through the application of green building principles in accordance with its function and classification at each stage of its development.

The concept of green building certification was introduced through MOE Reg 8/2010, which specifies that a building can be classified as a green building if it includes facilities and infrastructure for energy conservation and diversification. Green building certification is conducted by the Green Building Council Indonesia ("GBCI"), a non-governmental organization appointed by the Ministry of Environment as the certifying body. GBCI issues Green Building certificates to buildings that meet the GBCI rating system (GreenShip), provided they fulfill certain assessment criteria, including energy and refrigerant efficiency.

23. Is expropriation of real estate possible?

Yes, expropriation is possible, but only on a limited basis for land procurement needed for public interest, as stipulated in Law No. 2 of 2012 on Land Acquisition for Development in the Public Interest as amended by Omnibus Law. Expropriation for public interest is organized by the central government and may subsequently be owned by the central government, regional governments, or state-owned enterprises. The land is earmarked for the construction of public facilities, such as public roads, ports, airports, oil and gas and geothermal infrastructure, power plants, telecommunications and informatics networks, and other similar purposes for the national interest.

In connection with expropriation for land procurement in the public interest, landowners will be provided with compensation, which may take the form of money, replacement land, resettlement, or a combination of these options. Other forms of compensation may also be

agreed upon by the parties involved. The form and amount of compensation will be determined based on an assessment conducted by an independent appraiser, who will be selected and agreed upon by the BPN and the landowner during the deliberation on the determination of compensation/*musyawarah penetapan ganti kerugian*.

If there is no agreement on the form and amount of compensation, the landowner may file an objection with the local district court that has jurisdiction over the land.

24. Is it possible to create mortgages over real estate and how are these protected and enforced?

A *hak tanggungan* is a real security interest over land and related assets, similar to a "mortgage". The term "assets" includes buildings, plants, and crops—whether present or future—that are inseparable from the land, regardless of ownership by the land title owner.

The Land Mortgage Law and GR 18/2021 provide that the rights over land that can be secured with a *hak tanggungan* include, among others:

1. HM;
2. HGB;
3. HP over a State Land (*Tanah Negara*); and
4. HMSRS.

Creation of a *hak tanggungan* must be formalized through a notarial deed, specifically the Deed of Encumbrance of Land Mortgage/*Akta Pembebanan Hak Tanggungan* ("APHT"), executed before an authorized PPAT. The APHT must be registered with the relevant BPN office where the land is located. The *hak tanggungan* is effective once it is registered in the Land Mortgage Book/*Buku Tanah Hak Tanggungan* at the BPN office in the jurisdiction where the land is situated.

Upon registration of the *hak tanggungan* with the BPN, the mortgagee will receive a SHT as proof of the mortgagee's security interest in the land and any buildings situated on it.

In the event of the mortgagor's default, leading to the mortgagee's enforcement of the *hak tanggungan*, the mortgagee is entitled, based on the executorial title (self-executionary title) stated in the SHT, to sell the object of *hak tanggungan* through a public auction. However, by mutual agreement between the mortgagor and the mortgagee, the sale of the object of *hak tanggungan* may also be conducted privately, provided that such a private sale yields a higher price that benefits both the mortgagor

and the mortgagee.

Additionally, a single land title can support multiple mortgages (*hak tanggungan* rank 1, 2, 3, etc.) as long as the property's appraised value is sufficient to cover the obligations of all lenders involved. The ranking or priority of these mortgages is determined by the order in which they are registered at the BPN. If more than one *hak tanggungan* is registered on the same date, their rank shall be based on the date written on their respective deeds.

This means that the first mortgage registered will hold the highest priority (Rank 1), followed by the second (Rank 2), and so on. Each rank affects the lender's rights to repayment, with higher-ranking mortgages being repaid first in the event of foreclosure or sale of the property. The ability to secure multiple mortgages depends on the property's valuation, ensuring its value is sufficient to meet the cumulative obligations of all ranks.

In such cases, a property subject to *hak tanggungan* can have more than one rank of mortgage, with the following scenarios:

- a. The property is encumbered by multiple *hak tanggungan* to secure the same debt (originating from a single agreement); or
- b. The property is encumbered by multiple *hak tanggungan* to secure different debts (originating from separate agreements or involving different creditors).

25. Are there material registration costs associated with the creation of mortgages over real estate?

When creating a *hak tanggungan*, there are material registration costs associated with the registration of the APHT and the issuance of the SHT by the BPN. These costs include fees and taxes payable to the PPAT and BPN for the preparation, execution, and registration of the APHT, as well as the issuance of the SHT. The fees are generally calculated as a percentage of the amount secured by the *hak tanggungan* and vary depending on the PPAT office used and the location of the land subject to the *hak tanggungan*.

26. Is it possible to create a trust structure for mortgage security over real estate?

As explained in the previous section, the concepts of trust or beneficial ownership are not recognized in land ownership in Indonesia, including in the context of

granting *hak tanggungan* to a trustee or other third parties as collateral for the repayment of a debtor's debt to its creditor.

However, in practice, there is a common structure in

transactions involving foreign lenders, where Indonesian law does not prohibit the appointment of a security agent (i.e., an Indonesian bank) to hold and administer a *hak tanggungan* over Indonesian real estate on behalf of and for the benefit of the foreign lenders.

Contributors

Al Hakim Hanafiah
Partner

alhakim.hanafiah@dentons.com



Trijoyo Ariwibowo
Partner

trijoyo.ariwibowo@dentons.com



Hilwa Az-Zahra Adwani
Associate

hilwa.adwani@dentons.com



Gregorius Alisander Ponglapik
Associate

gregorius.ponglapik@dentons.com

