

Nusantara Capital City Land Procurement: Protection of Public Interest In The Strive For Investment

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A. NUSANTARA CAPITAL CITY AND LAND UTILIZATION

As Indonesia prepares to move its capital city from Jakarta to the Nusantara Capital City (“Nusantara”) this year,¹ the government, through various policies including the issuance of several pieces of legislation, continues its attempts to attract private sector investment in Nusantara, particularly through policies and legislation related to land utilization. By enacting Law Number 3 Year 2022 on The State Capital as amended by Law Number 21 Year 2023 (“IKN Law”) and its implementing regulations, certainty regarding land rights within the IKN area is granted, allowing private entities to obtain long-term land rights from the Nusantara Capital City Authority (“NCCA”) or by private transfer under commercial arrangements. In addition to directly owning a specific land right, the legal framework also provides an alternative mechanism for private entities to utilize land in IKN without formal land rights, giving them options aligned with their investment plans in Nusantara.

This granting of land rights or land utilization rights in Nusantara is carried out through approval mechanisms by the NCCA or other government institutions (e.g., the Ministry of Finance (“MoF”)), which ensures alignment between Nusantara development and its masterplan, investors’ needs, and the public interest.

B. LAND IN NUSANTARA CAPITAL CITY

B.1. Land Status, NCCA’s Authority over Land in Nusantara, and Nusantara Land Procurement

Article 15A of IKN Law provides that land in Nusantara is categorized as follows:

1. State Assets, for land related to central government affairs, the land title for which is Right to Use (*Hak Pakai*);
2. NCCA Assets, for lands unrelated to central government affairs, the land title for which is Right to Manage (*Hak Pengelolaan*) under NCCA;
3. Publicly owned land, for land owned by the public, the title for which is Right of Ownership (*Hak Milik*), Right to Cultivate (*Hak Guna Usaha*), Right to Build (*Hak Guna Bangunan*), Hak Pakai (*Right to Use*), and other forms of land ownership/title under prevailing law; and
4. State land.

In relation to the above, Article 15 (6) of IKN Law bestows on NCCA the authority to reorganize land in Nusantara through:

1. land acquisition for development in the public interest, direct land acquisition, and/or relocation in the event that the land is unutilized; and
2. land consolidation in the event that the land is utilized, in accordance with Nusantara’s spatial planning.

While the latter has yet to be further regulated by NCCA, land acquisition by NCCA is further regulated by Presidential Regulation Number 65 Year 2022 on Land Acquisition and Land Management in Nusantara Capital City (“Pres. Reg 65/2022”) and Head of NCCA Regulation Number 12 Year 2023 on Land Management Mechanisms in Nusantara Capital City (“Head of NCCA Reg 12/2023”) which acknowledges the following methods of land acquisition:

¹ Source: [Keppres Ibu Kota RI Pindah dari Jakarta ke IKN Nusantara Terbit 2024 \(cnnindonesia.com\)](https://www.cnnindonesia.com).

1. land acquisition for land owned or managed by members of the public, which consists of:
 - a. land acquisition for development in the public interest; and
 - b. direct land acquisition, which is executed through, among others, sale and purchase, grant, voluntarily release of land rights, land swap (*ruislag*) or other agreed means and is limited to (i) small scale land acquisition for development in the public interest (for land less than 5 hectares); (ii) investment purposes; (iii) other situations determined by the Head of NCCA; and
2. discharges of forest areas, for land categorized as forest and to be developed for the construction of Nusantara.

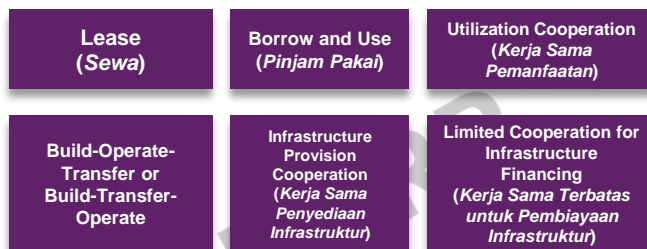
Pursuant to Article 11 Pres. Reg 65/2022 in conjunction with Article 8 Head of NCCA Reg 12/2023, land procured through the abovementioned mechanism must be registered as a State Asset or asset in possession³ (*aset dalam penguasaan*, hereinafter “ADP”) with Right to Manage title⁴.

B.2. Land Rights in Nusantara, Utilization of Lands, and Nusantara Capital City

Article 16 (7) of IKN Law provides that the NCCA has the authority to bind itself to individuals or legal entities with land title agreements over land in IKN. Exercising such authority over land procured by the NCCA which is available for investment purposes categorized as ADP, NCCA may under Article 16A (1) – (3) of the IKN Law give (i) Right to Cultivate for up to ninety (95) years; (ii) Right to Build; or (iii) Right to Use, each for up to eighty (80) years (all of which can be extended and renewed upon expiration) on top of NCCA’s Right to Manage title over ADP.⁵

Beside the abovementioned titles, investors may seek rights to utilize lands in Nusantara through the utilization of State Assets, NCCA Assets, or ADP should the investor wish to realise the investment through a partnership scheme with the Government (for example, public-private partnership).

As utilization of NCCA Assets and ADP is subject to further implementing regulations, Article 21 (1) of MoF Reg 53/2023 provides that the types of State Asset utilization are as follows:



For the above types of State Asset utilization, approval from the NCCA and/or MoF as Asset Manager is required, subject to the type of utilization in question.

Based on the above, investors may tailor their need for land title or land utilization to their investment strategy in Nusantara. Besides the abovementioned, investors may also acquire land title from a land right transfer transaction with existing land title holders as will be explained below.

B.3. NCCA Intervention in Land Right Transfer Transactions

As the IKN Law acknowledges existing publicly owned lands in Nusantara, investors may also obtain land right through a land right transfer transaction with existing title holders. However, to prevent excessive and speculative transfers of land right in Nusantara, the IKN Law gives the NCCA:

1. right of first offer (*Hak untuk Diutamakan*) which mandates the seller to initially propose the sale of the land to the NCCA. If the NCCA, at its sole discretion, chooses not to purchase the aforementioned land, the seller is then permitted to propose the sale of the land to a third party⁶; and

² Article 4-10 Pres. Reg 65/2022 jo. Article 9-31 Head of NCCA Reg 12/2023.

³ MoF Regulation Number 53 Year 2023 (“**MoF Reg. 53/2023**”) on Management of State Assets and Assets in Possession in Nusantara Capital City defines ADP as lands within Nusantara unutilized for government administration, where the MoF is determined as the ADP Manager and the Head of NCCA as the ADP Utilizer. IKN Law and MoF Reg. 53/2023 have provisions related to ADP as a land management mechanism by NCCA until NCCA effectively establishes the Nusantara Special Regional Government. After NCCA regional governance is effectively implemented, ADP will be reorganized into NCCA Assets.

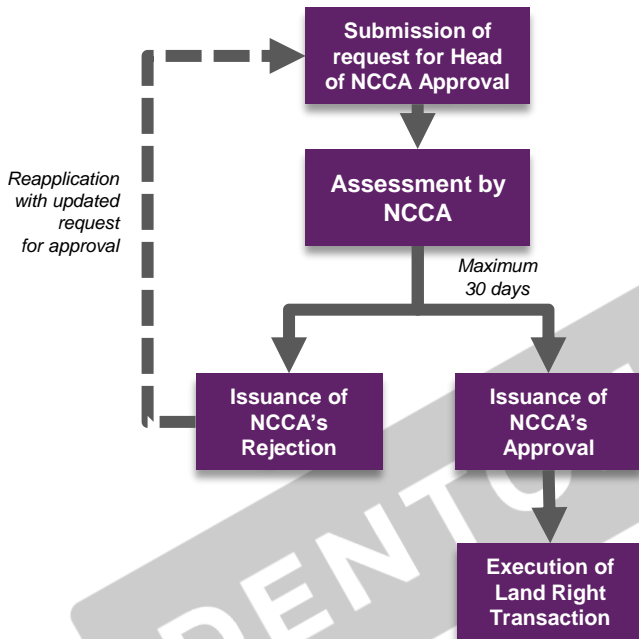
⁴ Article 16 of Government Regulation Number 12 Year 2023 on Granting of Business Licenses, Business Facilities, and Investment Facilities in Nusantara Capital City (“**GR 12/2023**”).

⁵ Article 17 – 21 GR 12/2023.

⁶ Article 17 IKN Law jo. Article 18 Pres. Reg 65/2022 jo. Article 34 Head of NCCA Reg 12/2023

2. authority to approve every land right transaction in Nusantara.

With the above in consideration, below is the steps/timeline for land right transfer transactions in Nusantara:



Following the above structure, the applicant must submit the request at least sixty (60) days prior to execution of the transaction and attach (i) copies of the buyer's and seller's identity documents; (ii) a copy of the land title; and (iii) a land development proposal in accordance with Nusantara's masterplan. The intended transaction must fulfill the following criteria:

1. the land must be offered to ministries/agencies/bodies of the central government, including NCCA;
2. the transaction must align with Nusantara's masterplan and spatial planning; and
3. the value of the intended transaction must be deemed to be fair.

However, Article 39 Head of NCCA Reg 12/2023 provides that the abovementioned mechanism does not apply to land right transfer transactions related to:

1. public-private-partnership for infrastructure provision if the NCCA acts as the government contracting agency;
2. the development of infrastructure and supporting facilities by the NCCA; or
3. the management and provision of humanitarian assistance during natural disasters, non-natural disasters, social disasters, and security situations.

Any party that intends to transfer land rights pursuant to the above must submit a notification to the NCCA at the latest one (1) day prior to the transfer, the notification consisting of at least (i) information on the seller and buyer of the land right; (ii) the land right transfer transaction value agreed by the seller and the buyer; and (iii) the statement of the competent authority which declares the natural disaster, non-natural disaster, social disaster, or security situation.

C. Key Takeways

1. In order to support business certainty, clarity regarding land rights is one of the aspects that business actors pay attention to.
2. To ensure that land procurement, including land utilization and transfer of land rights by business actors, is based on good governance, the Government has issued laws and regulations related to land procurement for the public interest, transfer of land rights to business actors, as well as the utilization of State Assets or NCCA Assets.
3. The aforementioned land regulation can be interpreted as the Government's effort to ensure that the use of land in Nusantara aligns with the allocation plan as regulated in Nusantara's masterplan and detailed masterplan. To ensure this, NCCA has been given specific authority related to land procurement such as, approval of land right transfer transactions and right of first offer.
4. The participation of all stakeholders such as business actors, government and the public is needed to ensure that the implementation of land procurement and utilization in Nusantara complies with the prevailing regulations.

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The article above was prepared by Dentons HPRP's lawyers

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