
Introducing the Land Bank and Other Changes in the Real Estate Sector



The seventh edition of "**Omnibus Law 2020: Overview Series**" will highlight changes in real estate sector. This alert is the second alert on real estate.

In our first real estate client update, we discussed changes to the spatial utilisation permit, building permits, amendments under the Housing Law and Apartment Law, and foreign ownership of apartment units. In this second update, we discuss other critical changes to this sector, which include land procurement for public purposes, the establishment of the Land Bank, and strengthening of the Right to Manage (*Hak Pengelolaan*) title.

Land Procurement for Public Purposes

Land procurement in Indonesia is known to be a time-consuming process, mainly because of the difficulty in determining fair compensation. Previously, the amount and form of compensation depended on the negotiation between the parties, which could be tedious and lengthy and would often delay the land procurement process.

To remedy this issue, the Omnibus Law transfers the determination of compensation to the land appraiser, who will conduct a valuation to determine the amount of the compensation. But this does not mean that negotiation is now off the table. The parties can still negotiate the form of compensation.

To further expedite the land procurement process, if the party entitled to the land rejects the amount or form of compensation, such party could request for a consignment to the District Court; which the Omnibus Law limits to 14 days. Similar to limiting negotiation, involving the District Court ensures that delay to the land procurement process is prevented. While parties entitled to lands may view these provisions as a significant drawback, institutions requiring lands would undoubtedly profit.

The Omnibus Law also widens the scope of land procurement for public purposes to include: land procurement for upstream oil and gas industries, special economic zones, industrial areas, tourism areas, food security area, and technology development area initiated and/or controlled by the government and state-owned and regional-owned enterprises. While the Omnibus Law does not define what government's initiation or control means, private investors working closely with the government can anticipate more opportunities to participate in land procurement for public purposes.

Land Bank

Another breakthrough under the Omnibus Law is the establishment of the Land Bank, which will serve as the body authorised to manage and redistribute land to guarantee that enough lands for public interests are available. The Land Bank is also authorised to plan, acquire, procure, and utilise lands. Lands managed by the Land Bank will receive the Right to Manage, and third parties may receive the Right to Build (*Hak Guna Bangunan*), the Right to Cultivate (*Hak Guna Usaha*), or the Right to Use (*Hak Pakai*) titles over the Right to Manage.

Considering the nature of the Land Bank as a non-profit agency, it remains to be seen how the Land Bank will implement its duties in managing state land, especially on whether it will cooperate with the private sector.

Abandoned Lands

To ensure that lands are utilised effectively, the government can now take over abandoned lands or lands that are not managed by the holder within two years (from previously three years) to be repurposed and redistributed for public purposes by the Land Bank.

This provision may be unfavourable for investors, especially capital-based businesses, as it forces them to immediately utilise lands that they have procured, despite licensing and economic uncertainties. Existing businesses with bulk land ownership, such as those in the forestry, agribusiness, and real estate sectors, are also potentially affected because they must actively utilise all their lands. Concerns on the Land Bank's feasibility have also started to arise, but for now, nothing is settled until the government issues a specific regulation on this topic.

Right to Manage Strengthened

Before the Omnibus Law, the Right to Manage was never stipulated at law level. Under the Omnibus Law, the Right to Manage title is not only affirmed, but also clarified. The law states that the holder of the Right to Manage can, among others, cooperate with third parties to utilise the land by entering into a land utilisation agreement and to determine tariff and receive income, compensation, or annual payment from the third party. The Omnibus Law also provides for an outright extension and renewal of a Right to Build over a Right to Manage title, subject to the holder obtaining a Certificate of Worthiness.

Regardless, the Omnibus Law did not touch one core issue of, the certainty of the extension of land titles before utilisation, which is a significant matter for investors in weighing up their investment

prospects. There is also no definite formulation of compensation/extension fees for land rights, which remain are governed inconsistently under different regional regulations. The government has been planning to issue a new government regulation on the Right to Manage, and indeed, there are drafts already in circulation. But for now, this regulation has not been issued.

Land Rights for Space Above and/or Under the Land

As Indonesia's property and construction sectors continue to flourish, existing laws encountered challenges when spaces above and under land is utilised separately. This is evident in recent construction developments in Indonesia, such as in the construction of the mass rapid transportation in Jakarta.

Under the Omnibus Law, spaces above and under a land can be utilised by different holders. In doing so, one must consider the depth of use (*batas kedalaman pemanfaatan*), floor ratio (*koefisien dasar bangunan*), plot ratio (*koefisien lantai bangunan*), and spatial planning of the relevant development. This allowance is good news for developers, as they can now enjoy legal certainty in terms of land ownership and their rights.

Digitalisation of Land Documentation

Lastly, following the digitalisation of land mortgage documents, we expect that the same treatment will be implemented to proof of land ownership, proof of apartment unit ownership, and right to manage, as well as deeds of transfer of land rights and other documents relating to land.

While digitalisation is long overdue, its application may not be practical as many existing overlapping land titles and unregistered land may hinder the digitalisation process. Akin to the land mortgage digitalisation, questions of authenticity, verification, e-signature, and data conformity may also arise. That being said, full digitalisation may not be feasible in the next few years.

Key Takeaways

Two of the main goals of the Omnibus Law is to improve the ease of doing business and simplify investment. These threads are found not only in changes to the real estate and property sectors but also in other sectors that were amended significantly under the Omnibus Law. But arguably, some provisions seem to be contrary to these goals. For example, provisions on land abandonment may instead decrease investors' appetite because of its potentially unfavourable effect.

Again, businesses should be aware that nothing is settled until the implementing regulations are enacted. Various news reports have mentioned that by November 2020, there are at least 30 draft government regulations that are already prepared, including those addressing the issue of land procurement for public purposes, Land Bank, Right to Manage title, and land abandonment.

The Indonesian government enacted Law No. 11 of 2020 on Job Creation on 2 November 2020. In anticipation of the questions that will arise, we are monitoring this evolving situation, with various teams currently examining the law to produce updates that are relevant to you. As always, we are committed to supporting you with advice and guidance. You can find our alerts on the Omnibus Law [here](#).

If you have any questions or concerns, please contact our attorneys or the BD team at BD@ahp.id.

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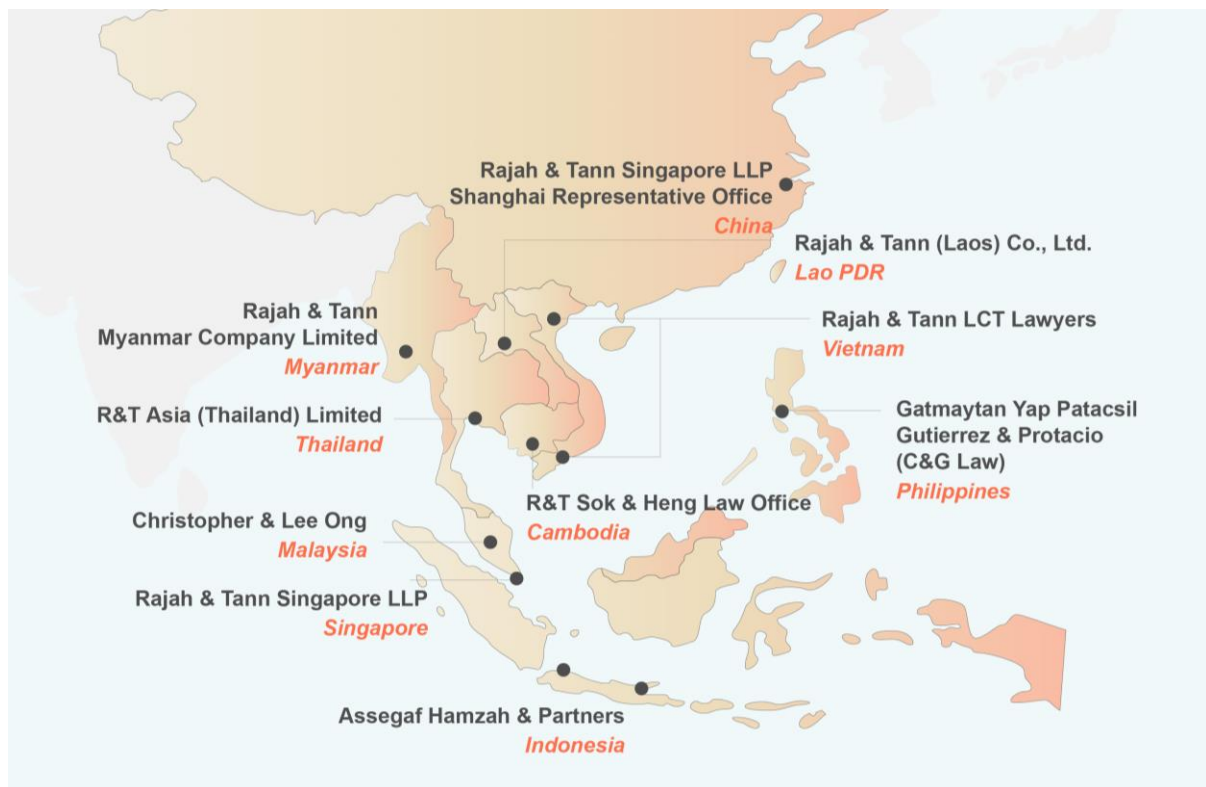
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