

The real estate law in Indonesia is mainly governed in the Law No. 5 of 1960 on Principle Provisions of Agrarian (the "Agrarian Law").

Right of Land

Under Agrarian Law, there are certain types of land, among others that are related in this regard are as follows:

1. Right to Own (*Hak Milik*);
2. Right to Build (*Hak Guna Bangunan*);
3. Right to Cultivate (*Hak Guna Usaha*);
4. Right to Use (*Hak Pakai*);
5. Right to Rent (*Hak Sewa*).

Under implementing regulations of Agrarian Law, we also recognize Right to Manage (*Hak Pengelolaan*). This right is specifically granted to the governmental bodies or governmental companies so that they can manage and determine the use of some plots of lands in their region.

Right to Own is the strongest right of land. It can be used for residential or commercial land. However, it is widely and mainly used for residential land. It also has unlimited period of ownership.

Right to Build is the right to build and own buildings built over the land. This right is granted for the maximum of 30 years and can be extended for another 20 years.

Right to Cultivate is for plantation, fishery or animal husbandry purpose.

Right to Use is the right to use or to cultivate the land owned by the State or another party. Under its implementing regulations, the right to use can be granted for the maximum of 25 years and can be extended for another 25 years or unlimited, provided that it is used for certain purpose e.g. foreign embassy representative.

Ownership of Right of Land

Right to Own can only be owned by Indonesian and limited Indonesia legal entity as determined by the Government of Indonesia.

Right to Build can be owned by (i) Indonesian and (ii) Indonesia legal entity that is domiciled in Indonesia. Foreign investment company (*Penanaman Modal Asing – PMA*) falls under the category of Indonesia legal entity that is domiciled in Indonesia.

Right to Use can be owned by (i) Indonesian (ii) foreigner (iii) Indonesian legal entity and (iv) foreign legal entity that has representative in Indonesia. The holder of the Right to Rent is the same as Right to Use.

Strata Title Building

Strata title is regulated under the Law No. 16 of 1985 on Condominium (the "Law of Condominium"). Under the Law of Condominium, a condominium can only be built over the land of the Right to Own, Right to Build, Right to Use or Right to Manage according to the prevailing laws.

It is called "strata title" because it is a combination of personal and common ownership. The developer of strata title condominium has the obligation to determine the divisions of condominium building before the land officials can produce the certificate of the right to own of strata title.

The right to own a strata title is known as the Right to Own of Strata Title (*Hak Milik atas Satuan Rumah Susun*). This right is individual and separated in nature. This right also includes common land (*tanah bersama*), common equipment (*bagian bersama*) and common facility (*benda bersama*). Right to Own of Strata Title can be owned by an individual and legal entity that fulfills the requirements under the law. These requirements will depend on the underlying land which a condominium is built.

If it is built over the Right to Own, then it can only be owned by Indonesian or limited Indonesian legal entity as determined by the Government of Indonesia.

If it is built over the Right to Build, then it can be owned by (i) Indonesian and (ii) Indonesia legal entity that is domiciled in Indonesia. This is the most widely used and available concept in Indonesia. Most of strata title building is built over the Right to Build.

If it is built over the Right to Use, then it can be owned by (i) Indonesian (ii) foreigner (iii) Indonesian legal entity and (iv) foreign legal entity that has representative in Indonesia. This is the best underlying land that can be owned directly by the foreigner or foreign entity. However, we have never known that there is a strata title building built over this land. One of the reasons is that it is not common for an Indonesian or Indonesia legal entity to own such right. Moreover, the Right to Use, for financing purpose from financing institution or bank, is regarded less value than the Right to Own or Right to Build.

Foreign Investment on Property Development/Investment Sector

Currently in Indonesia, there is no limitation for the foreigner or foreign entity to establish an Indonesia legal entity, fully owned by foreigner or foreign entity, which has main business in property development/investment sector. This matter is regulated under the Presidential Regulation of the Republic of Indonesia Number 77 of 2007 on List of Business Fields Closed and Open with Conditions to Investment as amended by Regulation of President of the Republic of Indonesia Number 111 of 2007 on Amendment to Presidential Regulation of the Republic of Indonesia Number 77 of 2007 on List of Business Fields Closed and Open with Conditions to Investment.

As it is said earlier above, the Right to Build can be owned by Indonesia legal entity. A PMA company is also regarded as an Indonesia legal entity. Further, for property development/investment sector, there is no limitation for a foreigner or foreign entity to establish a PMA company. Therefore, a foreigner or foreign entity, through a PMA company, can own a property or a strata title building which is built over the land of the Right to Build.