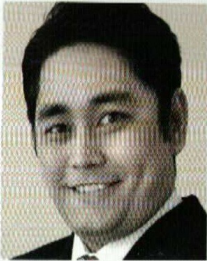


Awaiting a Law on Land

BY EDDY LEKS



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The House of Representatives is now reviewing the draft bill on land, and this draft bill must be completed in 2014. With the presidential election coming, it is logical to say that the current legislators may not approve the draft bill.

Some issues on the draft bill of land requires the House's special attention—such as the right of ownership (*hak milik*), the right to cultivate (*hak guna usaha*), the right to build (*hak guna bangunan*), the right of use (*hak pakai*), the right of lease over a building, nominee arrangements and land registration.

Provisions on the right of ownership are similar to what has been regulated under the Agrarian law of 1960. This should not be the case since the Agrarian law says that further regulations over the right of ownership fall under prevailing regulations. If the draft bill stipulates similar provisions with the Agrarian law, it means the Agrarian law's goals will not be achieved. One must also harmonize the right of lease as set out by the draft bill and the right of lease in the Indonesian civil code.

Conversely, the draft bill provides more expla-

nations on the right of use. Nevertheless, those provisions potentially violate the Investment law. The draft bill says the right of use can be utilized for farming, husbandry and plantations. It is vital to note that foreigner or foreign entity can hold the right of use. In contrast, the Investment law says foreign investment must be through a limited liability company. If these provisions are not harmonized, the two laws may conflict.

It is well known that foreigners control much land using nominee arrangements. Yet it is unclear how the court would react when these arrangements are tested in court. Thus the draft bill should clarify the right of land owned by foreigners or foreign legal entities, and also provide a fundamental mechanism to obtain those rights, particularly on the right of use. The goal is to eventually eliminate nominee arrangements. Moreover, as in the Investment law, the draft bill has

to regulate that these nominee arrangements are void by law. Even though it may be ineffective, the court will have legal grounds when it rules on these cases.

Indonesia adopts a negative publication system for land registration. Nevertheless, the positive element in the negative publication system is essential. The draft bill needs to regulate that a third party is unable to claim another party's land where the certificate of land is more than five years old. This step upholds legal certainty on land ownership, which reduces the possibilities of a land dispute. If this is realized, the land court's formation may not be seen as the only solution and it may not need to have a panel of judges that understand the land law. It will, however, be useless, if the positive element over negative publication system, namely the five-year grace period, is not clearly regulated.

The House's initiative to submit the draft bill is appreciated. Nonetheless, the draft bill has to be able to manage all existing land problems, not creating new problems. It is imperative to involve various parties so that the House can accurately understand the basic problems of land, is able to solve those problems, and mitigate any legal risks that may arise in the future over Indonesia's land law system. Hopefully, the House and government are able to achieve that expectation. **F**

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