

February 2016

Leks Newsletter

The Firm

Leks&Co is an Indonesian multi-services law firm, full of young, dynamic, and intelligent people, operating at a definite quality management system, rendering preeminent and world-class legal services under a specified quality code, core values, and client service standard

Our Uniqueness

1. We are young, energetic, and creative lawyers, so that we can provide and deliver a fast and reliable legal service;
2. We emphasize the use of technology in delivering our service;
3. We emphasize our core values in providing and delivering our service;
4. Our office is strategically located at CBD area;
5. We have received numerous award from Global Law Expert, Corporate INTL and Finance Monthly;
6. We provide services



Dear {FIRST_NAME},

This is the Leks Newsletter of February 2016. On this issue, you will see legal update and our blogs update. We hope that our newsletter is useful for you.

Leks News Update

Leks&Co sponsored Universitas Gajah Mada team in Gujarat National Law University International Law Moot Court Competition 2016



Leks&Co has sponsored Universitas Gajah Mada (UGM) team in Gujarat National Law University International Law Moot Court Competition 2016 that

to store client's legal document in the online server, accessible by our client password protected;

7. We provide useful legal update knowledge through Blogs, Twitter, Facebook, Slide Shares, and other resources;
8. We provide pro bono service for churches and social organizations, and international organizations through Trust Law Connect, run by Thomson Reuters Foundation and also through Mitra Klinik, group of pro bono providers at Hukumonline, leading legal news and education site in Indonesia;
9. We provide one (1) hour free consultation and free trial for retainer services within two (2) weeks;
10. We provide premium service with a cost efficient approach;
11. We are the International Partner of China-ASEAN Legal Cooperation Center;
12. We are member of (i) Eurojuris International, a leading worldwide network of law firms and (ii) International Chambers of Commerce.

Practice Areas

has been held in Gujarat, India on 3-7 February 2016. The competition is one of the very few moot court competitions in the world where the subject matter is International Trade Law. This year, there were 36 teams from around the world competed to be the winner.

[Click here to read more](#)

Contract Drafting Workshop at Universitas Atma Jaya



Our Partner, Ivor Ignasio Pasaribu, S.H. led a Contract Drafting Workshop held by Universitas Atma Jaya on 11 February 2016. The workshop discussed about how to draft a well-structured contract and crucial clauses as way to protect the interest of client.

[Click here to read more](#)

Legal Column in Property&Bank Titled “Mungkinkah Membatasi Peralihan HGU?”

Real Estate

Construction Law -
Foreclosure -
Homeowners Association - Land Use and Zoning - Landlord and Tenant Law - Property Law - Property Management - Property Commercial Dispute Resolution - Property Shares or Asset Acquisition - Legal Due Diligence on Property Company or its Assets - Lease Agreement

General Corporate / Commercial

Agency and Distributorship - Business Formation - Business Law - Commercial Law - Contracts - Corporate Governance - Corporate Law - Franchising - Joint Venture - Mergers and Acquisition - Shareholders Rights - Retail - Investment Law

Commercial Dispute Resolution

ADR (Alternative Dispute Resolution) - Business Litigation - Civil Litigation - Commercial Litigation - Corporate Litigation -

MUNGKINKAH MEMBATASI PERALIHAN HGU?

Eddy Leks, SH, MH, MCH, MCH, Managing Partner of L&C

Di koran Bisnis Indonesia pada tanggal 2 Februari 2016, di rebrik pertengahan terdapat berita dengan judul "HGU Tak Boleh Diambilkan ke Pihak Ketiga". Dari judulnya saja, hal ini menimbulkan tanda tanya, mengapa suatu Hak Guna Usaha (HGU) yang adalah hak atas tanah sebagaimana diatur dalam undang-undang, tidak dapat diizinkan kepada pihak ketiga?

Penertihan Presiden Jokowi selalu tampil kreatif untuk meniadakan dan meniadakan investasi dalam negeri dan asing. Belum lama, yaitu akhir tahun lalu, pemerintah menerbitkan peraturan pemerintah yang mengatur kepemilikan tanah dalam bentuk hak pakai (HP) untuk warga negara asing. Peraturan tersebut masih menjadi pencairan dan penerbitan hukum properti berjangka panjang. Namun, pemerintahan Presiden Jokowi juga perlu berhati-hati jangan sampai aturan main baru yang diterbitkan melacak peraturan perundang-undangan lain, baik secara horisontal maupun vertikal. Hal ini penting karena ada kecenderungan, pemerintahan Jokowi tidak begitu memperhatikan tata hukum yang sudah ada sejak semula.

Undang-undang pokok agraria (UUPA) mengatur bahwa HGU adalah hak untuk menguasai tanah yang dikuasai langsung oleh Negara, dalam jangka waktu tertentu, guna perusahaan pertanian, perikanan, atau peternakan.

UUPA juga mengatur bahwa HGU dapat beralih dan diizinkan kepada pihak lain. Hal ini diatur kembali dalam peraturan pemerintah tahun 1996 (PP 1996) yang mengatur mengenai HGU, hak guna bangunan (HGB), dan hak pakai (HP). HGU memang unik, lain dari HGB dan HP. HGU hanya bisa diberikan di atas tanah Negara. HGB dan HP dapat diberikan di atas tanah Negara, tanah hak milik (HM), dan tanah hak pengabdian. HGU juga hanya diberikan untuk tujuan pertanian, perikanan, atau peternakan, bukan untuk kepentingan pembangunan suatu bangunan. Meski dalam kenyataan, banyak didirikan bangunan di atas HGU, hal tersebut sesungguhnya tidak tepat.

Salah satu alasan penertihan tersebut membatasi peralihan HGU adalah karena HGU dipergunakan kepada pihak ketiga. Keberatan terhadap hal ini tepat dan memang sudah diatur di dalam PP 1996. Ketentuan di dalam PP 1996 melarang penyerahan pelepasan tanah HGU kepada pihak lain. Selain itu, salah satu kewajiban pemegang HGU adalah untuk mengusahakan HGU dengan baik sesuai kelayakan usaha dan kriteria yang ditetapkan instansi teknis. Jika kewajiban ini dilanggar, maka secara hukum, pejabat yang berwenang berhak membatalkan HGU tersebut. Pembatalan HGU tentu berbeda dengan larangan atau pembatasan peralihan.

UUPA dan PP 1996 mengatur secara jelas bahwa HGU dapat diizinkan kepada pihak ketiga. Hal ini adalah bagian esensial dari suatu hak atas tanah sebagai hak kebendaan. Untuk itu, tindakan yang perlu diambil adalah pembatalan HGU, bukan pembatasan atau larangan terhadap peralihan HGU.

Kemana penertihan untuk membatasi para pengusaha HGU adalah hal yang baik dan patut didukung. Namun, bentuknya keputusan-keputusan yang diambil haruslah merujuk pada kerangka dan sistem hukum pertanian yang ada agar tidak mencederai bagian lain di dalam sistem yang ada.

Eddy Leks wrote a legal column of Hukum Property titled "Mungkinkah Membatasi Peralihan HGU?" published in Property&Bank magazine - February edition.

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Conflicting Laws on Foreign Property Ownership

Conflicting laws on foreign property ownership

Eddy Leks

The debate over giving more flexibility and freedom to foreigners on residential ownership in Indonesia is never-ending.

Despite different views from various parties, the government has made the final step, promulgating a government regulation in the last week of December.

There are several elements in the regulation that are controversial or unclear. The change of duration of right of use (hak pakai) from 70 years to 80 years is highly material. The separation of mining asset agreements is another element that is still unclear.

There is wide interpretation and meaning of residence permits for foreigners. I want to look at the conflicts between the new regulation of 2016 and other regulations, vertically and horizontally.

The new regulation refers to Law No. 8/1960 on basic agrarian provisions, aka the Land Law. This is a fundamental law that has influence on many other laws.

The Land Law stipulates the type and characteristic of land rights in Indonesia, including right of use from its origin as explained in the classification of the Land Law, right of use derives from a collection of meanings of various names of rights of land, with slight regional differences.

Right of use essentially authorizes the holder to use and/or cultivate crops on land that is directly controlled by the state or other parties that is not categorized as a lease or land utilization agreement.

In order to promote foreign investment, the government promulgated a new law on investment in 2007 granting approval in advance on extension and renewal of duration of rights of land under the Land Law.

A few months after its promulgation, the Constitutional Court nullified the term "approval in advance" and accordingly, the extension and renewal can only be made before the term is going to expire.

The 2007 Investment Law clearly stipulates that the duration of right of use is 25 years, extended for 20 years and renewed for 25 years. The terms in the Investment Law strongly adhere to the government regulation of 1996.

Since the new government regulation of 2016 stipulates the duration of right of use is for 80 years, instead of 70 years, it clearly contradicts the Investment Law. In addition, it also violates the philosophical purpose of right of use under the land law of 1960.

From the explanation above, it is unquestionable that the duration of right of use is in conflict with what has been regulated under the government regulation of 1996.

Another important point is that of the new regulation of 2016 that restricted, land agencies and other government officials will interpret that for Indonesians, the right of use is valid for 70 years, but for foreigners, it is valid for 80 years. This is not only a conflict in the provisions of regulations, but more importantly, a violation of Indonesia's fundamental rights.

The government regulation of 2016 is only one of many regulations that contradict the new regulation of 1996.

What is shocking is that on the same date, i.e. Dec. 28, 2016, the government also issued a new regulation on special economic zones, in this regulation, it is stipulated that the duration of right of use for foreigners is 70 years.

Who, on the same date, did the government issue several regulations, regulating the same topic, but with two different durations? Being prudent is always better than acting hastily. It is important that the government always involve legal experts, academics, legal practitioners and parliament before issuing any regulation that have an impact on a particular law sector or even the public at large.

It is the government's obligation to ensure that the regulations are implementable and do not contradict laws existing laws.

Doing so is essentially best for business, especially for foreign investors.

It is therefore essential to review the new regulation of 2016 to be in line with the higher-ranking regulations and horizontally related regulations.

The government has to understand that to use the law as a social engineering tool must not violate legal principles.

The writer is the founder and managing partner of L&C lawyers.

Our Managing Partner, Eddy Leks wrote an opinion in The Jakarta Post, 19 February 2016, titled "Conflicting Laws on Foreign Property Ownership". The new government regulation on residential property by foreigner is conflicting with other regulations vertically and horizontally. Hence, the new regulation needs to

Financial Litigation –
Mediation – Arbitration

Mining

General Mining - Mining
Construction - Mining
Contractor – Mergers
and Acquisition on
Mining Companies –
Legal Due Diligence –
Commercial Dispute
Resolution on Mining
Company

Employment and Labor

Employee Benefits -
Employee Rights -
Human Resources Law
- Labor Relating -
Outsourcing - Workers
Compensation

Government

Administrative Law -
Government Contracts -
Local and Municipal
Law – Administrative
Dispute Resolution

Bankruptcy Claim -
Creditor Meeting -
Administration of
Assets - Liquidation

Environmental

Environmental Law

Criminal Criminal

Defense – Criminal
Investigation

be reviewed to get it harmonized with other regulations, especially the higher regulations.

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Leks Legal Update

Procedures of Evaluation on Issuing IUP for Mineral and Coal Mining



Background

The Government through Ministry of Energy and Mineral Resources (“MEMR”) are continuously doing steps to regulate the licenses on mining sector of which area is still overlapping. On 30 December 2015, the MEMR issued a new regulation related to the procedures of evaluation on mining business license (“IUP”) for mineral and coal, namely Regulation of Minister of Energy and Mineral Resources number 43 of 2015 on Procedures on Evaluation on Issuing Mining Business License for Mineral and Coal (“MEMR Regulation 43/2015”).

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Leks Blog Update

Preserved Cultural Heritage Buildings

Background

Intellectual Property
Intellectual Property
Rights

**International
Network**



**Awards and
Accolades**



Ministry of Public Works and Public Housing issued new regulations, namely Ministry of Public Works and Public Housing Regulation No. 01/PRT/M of 2015 on Preserved Cultural



Heritage Buildings (“Permen 01/2015”). This regulation came into force since 24 February 2015.

[Click here to read more](#)

Procedure of Applying for Facilities on Reduction of Entity’s Income Tax

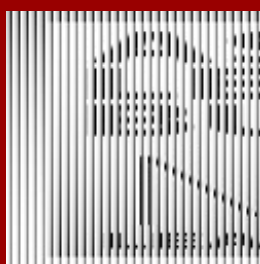
Background

On 3 September 2015, Head of Capital Investment Coordinating Board of Indonesia has issued the Head of Capital Investment Coordinating Board Regulation Number 13 of



2015 on the Procedure of Applying for Facilities on Reduction of Entity Income Tax as lastly amended by Head of Capital Investment Coordinating Board Regulation Number 19 of 2015.

[Click here to read more](#)



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PROFILES 2016
HIGHLY RECOMMENDED

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CHAMBERS
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- 2014 -

Eddy Leks

Ranked In
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- 2015 -

Eddy Leks

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