



## LEGAL CERTAINTY REGARDING LAND FOR INVESTORS IN INDONESIA

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### Abstract

Legal certainty regarding land for investors is an important form of legal protection in supporting investment activities in Indonesia. However, in practice, various problems still exist, such as overlapping certificates, land boundary disputes, and claims by third parties to land that has been granted a Right to Build (HGU), Right to Cultivate (HGU), and Right of Use (HP). This study employs a normative legal research method, utilising a regulatory and legal literature approach concerning legal certainty regarding land rights for investors. The findings indicate that legal protection for investors is realised through the granting of HGU, HGB, and HP rights under Government Regulation No. 18 of 2021, as well as land inspections via the Land Inspection Report to ensure the land's status is 'clean and clear'. Furthermore, the government provides streamlined services and land rights licensing under Law No. 25 of 2007 on Investment as a form of protection and legal certainty for investors in Indonesia.

**Keywords:** Legal certainty, land rights, investors

### INTRODUCTION

The development of globalisation in the modern era has had a significant impact on economic growth in various countries, including Indonesia. The inflow of investment into Indonesia has become a key factor in driving national economic development. Economic globalisation, characterised by increasing interdependence and integration in the financial, production and trade sectors, has had a positive impact on economic management and development in Indonesia. Consequently, the presence of investors, both domestic and foreign, plays a vital role in supporting economic growth and national development.

Historically, investment activities in Indonesia have been intrinsically linked to land use. Land is one of the key factors in the conduct of business activities, as almost all investment activities require land as a supporting resource for business operations. Land use in Indonesia is a crucial consideration, particularly for investors who are injecting capital to carry out business activities within the country.

Pursuant to Article 1(1) of Law No. 25 of 2007 on Investment, investment refers to any form of investment activity undertaken by either domestic or foreign investors for the purpose of conducting business within the territory of the Republic of Indonesia. Consequently, investment may be undertaken by both domestic and foreign investors who carry out business or investment activities in Indonesia.

Under Article 1 of Law No. 25 of 2007 on Investment, investment is classified into two forms, namely:

- a. Domestic investment and foreign investment. Domestic investment refers to investment activities carried out by domestic investors using domestic capital.
- b. Foreign direct investment refers to investment activities carried out by foreign investors, either entirely using foreign capital or in collaboration with domestic investors.

In practice, every investor is required to comply with the provisions and requirements set out in Indonesian legislation, particularly those relating to the use of land in business activities. This is

because investment activities are fundamentally inseparable from the use and control of land as a means of supporting business operations. However, this study focuses specifically on domestic investors undertaking investment activities in Indonesia.

Investors in Indonesia receive various facilities provided by the state to support investment activities, one of which is the facility of land rights. The provisions regarding this facility are regulated in Article 21(a) of Law No. 25 of 2007 on Investment, which states that the government provides facilitation of services and/or licensing to investment companies to obtain land rights.

Land rights are essentially rights to a specific portion of the earth's surface with defined boundaries, which may be utilised in accordance with applicable legal provisions. Under Indonesia's land law system, the land rights facilities that may be granted to investors comprise:

- a. Right to Cultivate (HGU);
- b. Right to Build (HGB); and
- c. Right of Use.

The provisions regarding these types of land rights are explicitly set out in Article 16(1) of Law No. 5 of 1960 on the Basic Principles of , which governs the various forms of land rights applicable in Indonesia, including the Right to Cultivate (HGU), the Right to Build (HGB), and the Right of Use, which may be utilised by investors in the conduct of their business activities.

In practice, the Right to Cultivate (HGU) is generally used for business activities in the fields of agriculture, plantations, fisheries, and livestock farming. Meanwhile, the Right to Build (HGB) is used for development activities such as the construction of factories, industrial estates, shopping centres, office buildings, hotels, apartments, and various other forms of commercial property. As for the Right of Use, it is generally used for foreign representative offices, specific business facilities, housing for foreign nationals, as well as limited use of state land in accordance with the provisions of laws and regulations.

Nevertheless, the regulations concerning land ownership by investors are not directly governed by freehold title. The legal certainty afforded to investors is essentially limited to the granting of land rights in the form of Business Use Rights, Building Use Rights and Right of Use. Consequently, under Indonesia's land law system, investors cannot directly hold land in the form of Freehold Title, as held by individual Indonesian citizens.

However, in practice, various issues persist regarding legal certainty over land owned by investors, particularly domestic investors. These issues frequently arise when investors have acquired or purchased land from the community for investment purposes, subsequently cleared the land, and applied to the state for the grant of land rights. In such circumstances, the state generally only grants land rights in the form of Building Use Rights (HGB), Business Use Rights (HGU) and Right of Use (HP).

This gives rise to legal issues regarding the certainty of land rights for investors, particularly in relation to land that has previously been purchased and acquired from the community by the investor. Although the investor has incurred significant costs in the land acquisition process, the rights obtained remain in the form of HGB, which has a fixed term and does not constitute freehold ownership.

Furthermore, other issues have arisen due to inadequate due diligence in the early stages of land acquisition. Inadequate scrutiny of the status and legality of the land may render the HGB, HGU and HP held by investors vulnerable to land disputes, such as overlapping ownership claims, boundary disputes, or claims by third parties to the land for which the HGB, HGU and HP have been granted. This situation can, of course, affect legal certainty and legal protection for investors in carrying out their business activities in Indonesia.

Based on the above, it is clear that regulations concerning land rights for investors in Indonesia are a crucial element in establishing legal certainty for investment activities. Such legal certainty is necessary to provide legal protection for investors whilst upholding the principle of state control over

land, as stipulated within Indonesia's agrarian legal system. Consequently, the author is interested in conducting research and writing a journal article titled "**Legal Certainty Regarding Land for Investors in Indonesia**".

## LITERATURE REVIEW

The research gap or novel contribution of this study lies in the exercise of land rights by investors in Indonesia in the context of investment activities, which, in practice, still does not fully provide concrete legal certainty regarding the land rights held by investors. Although various laws and regulations have been enacted to govern the granting of land rights to investors, such as the Right to Cultivate (HGU), the Right to Build (HGB), and the Right of Use, in practice, various legal issues are still frequently encountered that affect the legal certainty regarding land used as an investment site.

One such issue arises in the process of land acquisition or clearance carried out by investors through the purchase of land from local communities for investment and capital investment purposes. In practice, even though investors have purchased and acquired land in accordance with applicable procedures, land disputes frequently occur in the form of overlapping certificates, land ownership disputes, or claims by other parties to land that has been used for investment activities. These conditions render the land rights held by investors vulnerable to legal challenges and create legal uncertainty in the implementation of investment in Indonesia. Therefore, this research offers an innovative approach by focusing on the legal certainty of land owned by investors following the land acquisition process, particularly regarding the issues of overlapping certificates and the weak legal protection of investors' land rights. It is hoped that this research will provide an analysis of the forms of legal protection available, as well as the measures that can be taken to establish legal certainty regarding land for investors in Indonesia, so that investment activities can proceed safely, effectively, and sustainably.

## METHOD

The type of research employed in this paper is normative legal research, or doctrinal legal research. The research was conducted by examining literature focusing on positive legal norms. These legal materials include legislation, academic literature, and textbooks directly related to the fulfilment of legal certainty regarding land for investors in Indonesia. This approach is used to analyse the alignment of agrarian regulations with the protection of land rights held by domestic investors for the purpose of capital investment in Indonesia. The nature of the research applied is descriptive-analytical. Descriptive-analytical is an approach that clearly, in detail, and systematically describes legal issues found in the field, to then analyse their logical, relevant, and juridical interrelationships. This analysis aims to provide a clear picture of the forms of land rights, the limits of their control, and the extent to which land regulations in Indonesia are capable of providing legal certainty and protection for domestic investors.

## RESULTS AND DISCUSSION

### A. Protection and Legal Certainty of Land Rights for Investors in Indonesia

Legal protection and legal certainty regarding the exercise of land rights are crucial aspects in supporting investment activities in Indonesia, particularly for investors making capital investments.

Such legal certainty is necessary to ensure that investors have legal guarantees regarding the land used as a means of carrying out business and investment activities. Regulations concerning land rights in Indonesia are essentially governed by Law No. 5 of 1960 on Basic Agrarian Principles, which determines the entities that may hold or acquire land rights. The legal entities that may acquire land rights under these provisions include:

- 1 Indonesian citizens;
- 2 Foreign nationals resident in Indonesia;
- 3 Legal entities established under Indonesian law and resident in Indonesia; and
- 4 Foreign legal entities with a representative office in Indonesia.

These provisions indicate that the agrarian legal system in Indonesia allows both domestic and foreign investors to acquire land rights in accordance with the provisions of the law. In the context of investment, the granting of land rights to investors is intended to support economic activity and national development. This is in line with the provisions of Article 14 of Law No. 5 of 1960 concerning Basic Agrarian Principles, which regulates the supply, allocation and use of land, water, airspace and the natural resources contained therein for various purposes, including *Kepentingan negara*;

- 1 Religious purposes and other sacred needs;
- 2 Social, cultural and community welfare interests;
- 3 The development of agriculture, livestock farming and fisheries; and
- 4 The development of industry, transmigration and mining.

It can be understood from these provisions that the use of land by investors is essentially part of national economic development efforts which must benefit the public interest, society and the state. Therefore, the state has an obligation to provide legal protection and legal certainty regarding the land rights used by investors, provided that such use complies with the provisions of the law.

The form of legal protection for investors can be seen through the granting of land rights in the form of a Right to Cultivate (HGU), a Right to Build (HGB), and a Right of Use (HP). Provisions regarding the granting and duration of these land rights are regulated in Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration. The regulation stipulates that: *Hak Guna Bangunan diberikan untuk jangka waktu paling lama 30 tahun, dapat diperpanjang selama 20 tahun, dan diperbarui untuk jangka waktu paling lama 30 tahun*;

- 1 A Right to Use is granted for a maximum period of 35 years, may be extended for 25 years, and may be renewed for a maximum period of 35 years;
- 2 A Right of Use is granted for a maximum period of 30 years, may be extended for 20 years, and renewed for a maximum period of 30 years; there is also a Right of Use for the duration of use, granted for an indefinite period whilst the land is still being used in accordance with its designated purpose.

These provisions regarding the duration of land rights demonstrate the legal certainty that the state provides to investors in the use of land for business activities and investment in Indonesia. With the guarantee of the duration of land rights, investors gain certainty in conducting their business activities on a sustainable basis. However, although the duration of land rights is clearly stipulated in legislation, investors must still take note of the validity period of the land rights they hold, whether at the initial grant stage, during extensions, or when renewing those rights.

In practice, the process of extending and renewing Building Use Rights (HGB), Business Use Rights (HGU) and Right of Use (HP) must be a matter of serious concern for investors, particularly before the expiry of the term of these land rights. Investors must, in principle, apply for the extension or renewal of these rights no later than before the expiry of the rights' validity period to avoid legal

obstacles in the use of the land for investment activities. This is essential to prevent the suspension, cancellation, or administrative issues regarding the use of land rights by investors. Thus, legal certainty regarding the exercise of land rights can be guaranteed in accordance with the provisions of the legislation in force in Indonesia.

In addition to the granting of land rights, legal protection for investors is also provided through a land verification process prior to the granting of such rights. This verification aims to ensure that the land to be used by the investor is not subject to any disputes, that there is no overlap of rights, and that its legal status is clear. In practice, land inspections are carried out by Committee A, Committee B, and the Land Surveying Officer as stipulated in Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration.

The findings of the inspections carried out by Committee A, Committee B and the Surveying Officer shall be recorded in a report as provided for in Article 137(2) of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration, which stipulates that the Land Inspection Committee's report shall contain:

- 1 Description of the applicant;
- 2 Description of the land in question;
- 3 Description of the rights to be established;
- 4 Description of the supporting documents in the application file;
- 5 Legal basis for the establishment of rights;
- 6 Description and analysis of the subject and object of the right;
- 7 Analysis of the land rights to be established;
- 8 Opinions and considerations of the committee members; and
- 9 Conclusion.

The land survey report is a document detailing the findings of the investigation and survey of the subject and object of the land for which rights are being sought. Through this report, the government is able to carry out a comprehensive verification of the applicant's identity, the legal status of the land, the land boundaries, the basis of land tenure, and the eligibility for the granting of the land rights sought by the investor.

With this inspection mechanism in place, the state has essentially sought to provide legal protection and legal certainty to investors as holders of HGU, HGB, or Usufruct Rights. The inspection also aims to minimise the occurrence of various land-related issues that could be detrimental to investors, such as:

- 1 Land Disputes.

Land disputes are conflicts over land between individuals, legal entities or institutions that have far-reaching socio-legal implications. In the context of investment projects, these disputes typically involve investors and local communities, indigenous peoples, or government agencies, and are often resolved through the courts or arbitration. Such disputes are usually triggered by disagreements over compensation levels during land acquisition, breaches of administrative procedures in the granting of land rights, or claims of human rights violations affecting local communities' access to their living spaces.

- 2 Overlapping Certificates.

Certificate overlap is a legal situation in which there are two or more administratively valid land title certificates that refer to the same parcel of land, either in part or in full. This problem stems from historical weaknesses in the spatial data and land mapping systems within land offices, inaccurate demarcation of land boundaries, and the scope for manipulative actions by land mafias in issuing forged land title documents. For investors,

certificate overlap poses a fatal threat as it undermines the absolute evidential force of the Building Use Rights or Business Use Rights certificates they hold. This forces investors into a spiral of certificate annulment lawsuits in the Administrative Court, which risks having the investment in the land declared legally defective and null and void.

### 3 Land Ownership Disputes.

Land ownership conflicts are a clear clash of interests involving both physical and social tensions on the ground regarding which legal entity is most entitled to lawful physical control of the land. Unlike disputes that have entered the realm of formal law, ownership conflicts often take the form of unilateral actions on the ground, such as blocking factory access roads, the illegal occupation of plantation land by residents, or the destruction of company facilities by parties who feel their land has been seized. These conflicts arise due to a disconnect between the legal ownership on paper held by investors and the physical control of the land that has been occupied for generations by indigenous or local communities. The absence of a just resolution to these ownership conflicts not only threatens the security of investors' capital but also undermines the international perception of the stability of the national investment climate.

## **B. The authority exercised by the government in providing legal certainty of land rights for investors in Indonesia.**

Investors in Indonesia who engage in investment activities, whether in the form of legal entities, unincorporated business entities or sole traders, are essentially treated equally by the government, with no distinction made between them and other investors. This represents the government's efforts to create a safe and fair investment climate that provides legal certainty for every investor conducting business activities in Indonesia.

The government's authority to provide legal certainty regarding land rights for investors has been systematically regulated, ranging from basic regulations to their implementing regulations. This authority is evident in Law No. 25 of 2007 on Investment, which provides various facilities to investors in carrying out investment activities in Indonesia.

Article 21 of the Act stipulates that the government shall provide facilitation of services and/or licensing to foreign-invested companies in the form of:

- 1 Land rights facilities;
- 2 Immigration services; and
- 3 Import licensing facilities.

In the context of this study, the type of facility most closely linked to legal certainty for investment is the facility relating to land rights. Provisions regarding land rights for investors are further set out in Article 22 of Law No. 25 of 2007 on Investment, which essentially stipulates that:

- 1 Facilities and/or permits relating to land rights may be granted, extended and renewed upon application by the investor;
- 2 Land rights may be granted and extended in advance in a single batch for investment activities;
- 3 Land rights may be renewed following an evaluation of the use and utilisation of the land in accordance with the purpose for which the rights were granted; and
- 4 The Government may suspend or revoke land rights if the investor neglects the land, harms the public interest, uses the land contrary to its designated purpose, or breaches the provisions of legislation in the field of land affairs.

These provisions demonstrate that the government has the authority to provide legal protection and certainty regarding the exercise of land rights for investors in Indonesia. Through the provision of these facilities, investors are afforded legal certainty and support in carrying out their investment and capital-raising activities.

However, in obtaining land rights in the form of a Right to Cultivate (HGU), a Right to Build (HGB), or a Right of Use, investors are still required to fulfil various administrative requirements and legal procedures as stipulated in legislation. These provisions are further regulated in Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, which governs the procedures for the granting, extension, renewal, and registration of land rights.

The government's authority to provide legal facilities and protection regarding land rights for investors represents the state's efforts to establish legal certainty in the field of investment. Such legal certainty for investors provides them with a sense of security in conducting business activities and supports the creation of a conducive and sustainable investment climate in Indonesia..

## CONCLUSION

- 1 Legal protection and certainty regarding land for investors in Indonesia are provided through the granting of land rights for a specified term (HGU, HGB, and Hak Pakai) under Government Regulation No. 18 of 2021, supported by preventive mechanisms in the form of comprehensive land inspections carried out by Committee A, Committee B, and the Land Surveying Officer. The Land Inspection Report produced from this process serves as a crucial verification instrument to ensure the land is clean and clear of issues. This legal assurance is vital for the investment climate as it not only provides scope for long-term business sustainability but also minimises structural risks on the ground, such as land disputes, overlapping certificates, and conflicts over physical land ownership, which can harm investors' capital and disrupt national economic stability.
- 2 The Indonesian Government guarantees equal treatment without discrimination for all forms of investment in order to create a fair and conducive investment climate. This guarantee of legal certainty is realised in practice through the provision of streamlined services and land rights permits (HGU, HGB, and Hak Pakai) as stipulated in Articles 21 and 22 of Law No. 25 of 2007 on Investment. Under these regulations, the government possesses the legal authority to grant and extend land rights in advance, conduct benefit assessments, and impose sanctions in the form of revocation of rights should an investor neglect the land or violate the public interest. Although this facility provides significant capital protection and scope for business sustainability, investors remain bound by the fulfilment of administrative requirements and procedural compliance as stipulated in Government Regulation No. 18 of 2021, thereby creating a balance between the protection of investors' rights and the state's supervisory function in the field of land affairs.

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