Ministry of Agrarian and Spatial Planning Introduces an Electronic Based Registration of Hak Tanggungan

Recent Development

Effective in June 2019, the Ministry of Agrarian and Spatial Planning ("Ministry") has issued Regulation No. 9 of 2019 on Hak Tanggungan Integrated Electronic Services ("Regulation 9"). Regulation 9 introduces an integrated electronic system mechanism for hak tanggungan services that will be operated by the land offices ("HT-el System"). The goal of this regulation is to implement the HT-el System in all land offices in Indonesia. However, for the implementation of the regulation in 2019, the system will be implemented in seven pilot land offices that will be specified in a minister decree.

Regulation 9 requires applicants for hak tanggungan services to be Registered Users (as defined below) in the system. Also, the hak tanggungan certificate will be issued as an electronic document. We elaborate on the key points of the regulation below.

Registered User

Regulation 9 requires applicants to be registered in the hak tanggungan electronic system. A Registered User is defined in Regulation 9 as an individual or a legal entity acting as a creditor and State Civil Apparatus of the Ministry. The Registered User is required to among others:

- have an electronic domicile or an email address that will be registered in the system
- have a certificate of registration from the Financial Services Authority ("OJK")

We understand from our discussion with the Ministry that a Registered User may be an individual or a financial institution listed in OJK that acts as a creditor. A bank or other financial institution has to be listed in OJK to be a Registered User as evidenced by the Certificate of Registration from OJK (i.e., local banks and foreign banks that have branch offices in Indonesia). Apart from the Registered Users, Land Deed Officers will have access to the HT-el System to upload the Deed of Granting of Hak Tanggungan (APHT) for the purposes of registration of hak tanggungan.

Mechanism of Hak Tanggungan Electronic System

Applicants will be able to access the HT-el System from when they become Registered Users. Under Regulation 9, the HT-el System provides hak tanggungan services such as registration of hak tanggungan, transfer of hak tanggungan, change of creditors and release of hak tanggungan. The requirements to apply for hak tanggungan services under Regulation 9 are the
same as those in the prevailing regulation on hak tanggungan and land registration.

Registration
The Registered User applies for hak tanggungan and submit all required documents through the HT-el System operated by the land offices. The requirements for the registration of hak tanggungan includes submitting:

- a statement letter from the Registered User confirming the validity and truth of the documents submitted - the form of statement letter is provided in Schedule I of Regulation 9 ("Statement Letter")
- the Deed of Granting of Hak Tanggungan (APHT) that will be uploaded by the Land Deed Officer according to the prevailing regulation

Transfer and Changes of Creditors
Upon any transfer of hak tanggungan or changes of creditors, the revised certificate of hak tanggungan will be issued through the HT-el System with the same number and will contain new information on the grantor or grantees. All required documents are required to be enclosed with the Statement Letter.

Correction
If there are any errors in the certificate of hak tanggungan, the revised certificate of hak tanggungan will be issued through the HT-el System with the same number containing the revised information. The Registered User is required to apply for a correction of the hak tanggungan certificate through the HT-el System at the latest 30 days after the issuing date of the hak tanggungan certificate.

Release
Upon full payment of all debts secured by the hak tanggungan, creditors shall immediately register the release. All required documents for the release of hak tanggungan are required to be enclosed with the Statement Letter.

Issuance of hak tanggungan certificate
The Registered User is required to pay the registration fee at the latest three days after the registration date. The registration fee is still in accordance with the prevailing regulations on non-tax state revenue that applies to the Ministry. Within seven days after receiving all required documents and payments, the land office will issue the hak tanggungan certificate in the form of an electronic document that will be uploaded to the HT-el System and sent to the Registered User’s electronic domicile. The land office will list the encumbrance of hak tanggungan in the land register book and the relevant land certificate.

Implications of Regulation 9
Status of existing hak tanggungan registered in land offices in Indonesia
According to our discussion with the Ministry, the existing hak tanggungan that have been registered in physical form will continue to be processed in physical form for any amendments, transfers or releases and are not affected by the issuance of this regulation. This regulation applies to hak tanggungan that will be registered after the implementation of this regulation. In the initial stage of implementation of Regulation 9, this would only affect the registration process in the seven land offices specified in a minister decree. However, this
The minister decree has not yet been issued so there is no clear information on the proposed seven land offices, which will implement the HT-el System.

**Land certificates that will be placed under hak tanggungan are required to be under the name of the debtor**

Under the new regulation, the documents required for the registration include the land certificate under the name of the debtor. In this article, they do not use a capital letter for the word “debtor” even though the regulation has a defined term for “Debtor”. From a literal reading, it seems that only a debtor can encumber the land and a third party security provider may not. However, according to our discussion with the Ministry, the term “debtor” referred to in this article includes a third party security provider that owns the land certificate that will be encumbered under hak tanggungan. As an implementing regulation, Regulation 9 has to be in line with Hak Tanggungan Law, which provides that a third party may be appointed as a security provider for the debtor in respect of a loan agreement between a debtor and a creditor - therefore, such third party land certificate can be encumbered with hak tanggungan.

**State Civil Apparatus of the Ministry as a Registered User**

State Civil Apparatus of the Ministry should mean employees of the land offices that will operate the HT-el System. As of now, it is still unclear whether the Ministry will establish a particular division, body or entity to implement this regulation.

**Registration for offshore lenders under Regulation 9**

Under Regulation 9, offshore lenders do not have direct access to the HT-el System as they are not financial institutions registered in OJK. We understand from our discussion with the Land Deed Officers and the Ministry that for offshore lenders, registration process will be conducted through the State Civil Apparatus of the Ministry. We note from that discussion that for offshore lenders, the Land Deed Officer in Indonesia would be able to assist with the registration of hak tanggungan to the State Civil Apparatus of the Ministry. Further details on the implementation of this regulation will be provided by the officials through socialization of the regulation and implementing regulations - we understand from the officials this has not yet been carried out.

While the issuance of this regulation promises a more effective and efficient way, this regulation is still premature. Therefore, this may also cause uncertainty and delay in the migration from the current physical registration process to an online process. We will provide further updates once there is an implementing regulation, socialization or further development on this regulation.