THE PRESIDENT OF THE REPUBLIC OF INDONESIA

ACT NUMBER 4 OF 1996
OF THE REPUBLIC OF INDONESIA
DATED: 9 APRIL 1996

RE

UNDERWRITING RIGHT ON LAND INCLUDING OBJECTS RELATING TO LAND

BY THE GRACE OF GOD ALMIGHTY
THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

Considering a. that with the further increase of the national development, emphasized on the economic sector, a sufficiently large funds provision is required; so that a strong underwriting right institution is necessary, capable of providing legal certainty to the parties concerned, which can stimulate the increase of the community's participation in the development for the realization of a prosperous, just, and contented community based on Pancasila (Five Principles) and the 1945 Constitution;

b. that since the effectiveness of Act Number 5 of 1960 on Basic Regulation of Agrarian Principles up to this moment, the complete provisions on the Underwriting Right as underwriting right institution, which can be imposed on the land with or without objects in connection with land, has not yet been established;

c. that the provisions on Mortgage as regulated in Book 11 of the Indonesian Civil Code, as long as it concerns land, and the provisions on Credit Relationship in the State Gazette of 1908-542 as already amended by State Gazette 1937-190, which was based on Article 57 of Act Number 3 of 1960 on Basic Regulation of Agrarian Principles, which are still enforced provisionally until the formation of the Act on Underwriting Right, and which is considered as no longer suitable to the demand of the credit activities, in connection with the, development of the economic system of Indonesia;

d. that in view of the development which has already occurred, and which will occur in the sector of the regulation and administration of the rights on land and to meet the demand of the community at large, besides the Property Right, the Undertaking Right, and " Building Right already designated as an object of the Underwriting Right by Act Number 5 of 1960 on basic Regulations on Agrarian Principles, simultaneously realizing the unification of the Act on National Land Law;

Bearing in mind: 1. Article 5 paragraph (1), Article 20 paragraph (1) and Article 33 of the 1945 Constitution;

2. Act Number 5 of 1960 on Basic Regulation of Agrarian Principles (State Gazette of 1960 Number 104, Supplementary State Gazette Number 2043);

With the Approval of
THE HOUSE OF REPRESENTATIVES (PARLIAMENT)
OF THE REPUBLIC OF INDONESIA

HAS DECIDED:

To stipulate: **ACT ON UNDERWRITING RIGHT ON LAND INCLUDING OBJECTS IN CONNECTION WITH LAND**

CHAPTER I
GENERAL PROVISIONS
Article 1

In this Act referred to as:

1. Underwriting right on land, including objects in connection with land, which is further called Underwriting Right, shall be the right of guarantee, imposed on the right on land as referred to in Act Number 5 of 1960 concerning Basic Regulation of Agrarian Principles, with or without other objects constituting one unit with said land, for the settlement of certain debts, which provides a priority position to certain creditors towards other creditors;
2. Creditor shall be the party which has receivables in a certain debt-receivable relationship.

3. Debtor shall be the party which is indebted in a certain debt receivable relationship;
4. Land Deed Official who hereinafter shall be referred to as PPAT, shall be a Public Official, given the authority to draw up deeds for the transfer of rights on land, deeds for the imposition of rights on land and deeds for the authorization to impose Underwriting Right, according to the legislative regulations in force;
5. The Underwriting Right Provision Deed shall be the PPAT Deed containing the provision of the Underwriting Right to certain Creditors as guarantee for the expansion of their receivables.
6. The Land Affairs Office shall be the work unit of the National Land affairs Agency in the territory of a Regency, Municipality or other administrative territories of the same level, which is conducting the registration of the rights on land and the maintenance of the lard registration general List.

Article 2

(1) The Underwriting right is in nature indivisible, except if it is agreed upon in the Underwriting Right Provision Deed as referred to in paragraph (2).
(2) If the Underwriting Right is imposed on several rights on land, it can be made a condition in the Underwriting Right Provision Deed, that the settlement of the guaranteed debt can be conducted by way of installments, of which the amount shall be equivalent to the value of the respective rights on land, which constitutes part of the object of the Underwriting Right, which will be released from said Underwriting Right, so that later-on said Underwriting Right will only be imposed with the remaining Underwriting object to guarantee the remainder of the debt, not yet settled.

Article 3

(1) The debt, of which the settlement is guaranteed with an Underwriting Right, may constitute an already existing debt or one which is underwritten for a certain amount, or an amount which at the time the application for the execution of the underwriting right is forwarded, can be stipulated based on a debt-receivable agreement, or another agreement, which creates the debt-receivable relationship concerned.
(2) The Underwriting Right can be given to a debt originating from a legal relationship, or for one debt or more, originating from several legal relationships.

CHAPTER II
UNDERWRITING RIGHT OBJECT
Article 4

(1) The rights on land which can be imposed with an Underwriting Right, are:
  a. Property Right;
  b. Undertaking Right; ,
  c. Building Right.
(2) Besides the rights on land as referred to in paragraph (1), the utilization Right on State Property land, which according to the prevailing provisions, shall be registered and according to the nature there-of can be transferred, can also be imposed with an Underwriting Right.
(3) The imposition of an Underwriting right on the Utilization Right on Property land will be further regulated by Government Regulation.
(4) The Underwriting Right can also be imposed on the right on land, including the buildings, plants and the already existing or to be existing working results which constitute a unit with said land, and which constitute the property of the holder of the right on the land, of which the imposition is definitely stated in the Underwriting Right Provision Deed concerned.
(5) If the buildings, plants and work results as referred to in paragraph (4), are not the property of the holder of the rights on the land, the imposition of the underwriting Right on said objects can only be conducted by co-signing the Underwriting Right Provision Deed concerned by the owner there-of, or by a person authorized by him there-for, with an authentic deed.

Article 5

(1) An Underwriting Right object can he imposed with more than one Underwriting Right to guarantee the settlement of more than one debt.
(2) If an Underwriting Right object is imposed with more than one Underwriting Right, then the ranking of the respective Underwriting Rights shall be determined according to the registration dates at the Land Affairs office.

(3) The ranking of the Underwriting Rights registered on the same date, shall be determined according to the date the Deed of the Underwriting Right Provision concerned is drawn-up.

Article 6

If a debtor does not meet his liabilities, then the first holder of the Underwriting Right has the right to sell the Underwriting Right Object on his own behalf through a public auction as weal as to taking the settlement of his receivables from the proceeds of said sale.

Article 7

The Underwriting Right continues to follow the object in whose hand said object is.

CHAPTER III
UNDERWRITING RIGHT PROVIDER AND HOLDER
Article 8

(1) The Underwriting Right Provider shall he an individual person or a legal entity, who/which has the competency to conduct a legal action towards the Underwriting Right Object concerned.
(2) The competency to conduct a legal action towards an Underwriting Right Object as referred to in paragraph (1), shall he with the Underwriting Right Provider at the time the registration of the Underwriting Right is conducted.

Article 9

The Holder of the Underwriting Right shall he an individual person or legal entity, who/which has the position as the party who/which has the receivables.

CHAPTER IV
PROCEDURES FOR THE PROVISION, REGISTRATION, TRANSFER AND ABOLISHMENT OF THE UNDERWRITING RIGHT
Article 10

(1) The provision of an Underwriting Right shall he proceeded by a promise to provide an Underwriting Right as a guarantee for the settlement of a certain debt, set forth in-and constituting an inseparable part of the debt-receivable agreement concerned, or another agreement creating said debt.
(2) The provision of an Underwriting Right shall he conducted by way of drawing-up an Underwriting Right Provision Deed by a PPAT, in accordance with the legislative regulations in force.
(3) If the Underwriting Right Object constitutes a right on land originating from the conversion of an old right, which already meets the conditions to he registered, but of which the registration has not yet been conducted, then the provision of the Underwriting Right shall be conducted simultaneously with the application for the registration of the right on the land concerned.

Article 11

(1) In the Underwriting Right Provision Deed shall he set forth:
a. the name and identity of the holder and the provider of the Underwriting Right;
b. the domicile of the parties as referred to in letter a, arid if among them, some-one is domiciled abroad, then for him shall also be set forth a selected domicile in Indonesia, and in case the selected domicile is not set forth, then the PPAT Office where the Underwriting Right Provision Deed has been drawn-up, shall be considered as the selected domicile;
c. a clear indication of the guaranteed debt or debts as referred to in Articles 3 and 10 paragraph (1);
d. the underwritten value;
e. a clear description concerning the Underwriting right object.
(2) In the Underwriting Right Provision Deed may be set forth promises, among others
a. the promise which limits the competency of the Underwriting Right Provider to lease the Underwriting Right object and/or to determine or amend the lease period and/or to receive the advance lease money, except with the prior written approval of the Underwriting Right Holder;

b. the promise which limits the competency of the Underwriting right provider to amend the form or the composition system of the Underwriting Right Object, except with the prior written approval of the Holder of the Underwriting Right Holder;

c. the promise which provides the competency to the holder of the Underwriting Right to manage the Underwriting Right Object, based on a decision of the Chairman of the District Court, whose Jurisdiction territory includes the location of the Underwriting Right Object, if the debtor really does not meet his liabilities;

d. the promise which provides the competency to the Underwriting Right holder to save the Underwriting Right Object, if required in the execution implementation, or in preventing the occurrence of the abolishment or cancellation of the right of the Underwriting Right Object because of a failure in meeting or a violation of the provisions of the Act.

e. the promise that the first Underwriting Right Holder has the right to sell on his own behalf, the Underwriting Right Object, if the Debtor fails to meet his liabilities;

f. the promise given by the first Underwriting Right Holder, that the Underwriting Right Object shall not be cleansed/cleared from the Underwriting Right;

g. the promise that the provider of the Underwriting Right will not release his right on the Underwriting Right Object without the prior written approval of the Underwriting Right Holder;

h. the promise that the Underwriting Right Holder will obtain all or part of the indemnification, received by the Underwriting Right Provider for the settlement of the receivables, if the right on the Underwriting Right Object is released by the! Underwriting Right Provider, or is revoked for the interest of the public.

i. the promise that the Underwriting Right Holder will obtain all or part of the insurance money, received by the Underwriting Right Provider for the settlement of his receivables, if the Underwriting Right Object is insured;

j. the promise that the Underwriting Right provider will vacate the Underwriting Right Object at the time of the execution of the Underwriting Right.

k. the promise referred to in Article 14 paragraph (4).

Article 12

The promise which gives the authority to the Underwriting Right Holder to own the Underwriting Right Object, if the debtor fails to meet his liabilities, is cancelled by Law.

Article 13

(1) The Underwriting Right Provision shall be registered at the Land Affairs Office.

(2) At the latest 7 (seven) working days after the signing of the Underwriting Right Provision Deed as referred to in Article 10, paragraph (2), the PPAT shall send the Underwriting Right Provision Deed concerned and the other documents required, to the Land Affairs Office.

(3) The Registration of the Underwriting Right as referred to in paragraph (1) is conducted by the Land Affairs Office, by making an Underwriting Right Land-Book and register it in the land-book on land, which is an Underwriting Right Object, and Copy said registration on the Right on Land Certificate concerned.

(4) The date in the Underwriting Right land-book as referred to in paragraph (3), shall be the date of the seventh day after the complete receipt of the documents, required for the registration there-of, and if this seventh day should be a holiday, then the land-book concerned shall be given the date of the following working day.

(5) The Underwriting Right shall commence on the date of the Underwriting Right land-book as referred to in paragraph (4).

Article 14

(1) As evidence of the existence of an Underwriting Right, the Land Affairs Office issues an Underwriting right Certificate, in accordance with the legislative regulations in force.

(2) The Underwriting Right Certificate as referred to in paragraph (1), shall contain the words "FOR THE SAKE OF JUSTICE BASED ON BELIEF IN GOD ALMIGHTY".

(3) The Underwriting Right Certificate as referred to in paragraph (2) has an executorial power, equal to a judgement of a Court of Justice, which has already obtained permanent. legal power and is effective as substitute of the Mortgage First Copy Deed as far as it concerns the right on land.

(4) Except if otherwise agreed upon, the certificate of right on land, already provided with a note on the imposition of an Underwriting Right as referred to in Article 13 paragraph (3), shall be returned to the holder of the right on the land concerned.

(5) The Underwriting Right Certificate shall be submitted to the Underwriting Right Holder.

Article 15

(1) The Underwriting Right Imposition Power of Attorney shall be drawn-up by Notarial Deed, or by a Deed of the PPAT, and shall meet the following conditions

a. it shall not contain the power to conduct other legal actions than the imposition of the Underwriting Right;

b. it shall not contain a substitution power;

c. it shall clearly set forth the Underwriting Right Object, the debt amount and the name as well as identity of the creditor, the name and identity of the debtor, if the debtor is not the Underwriting Right provider;

(2) The power to impose the Underwriting Right cannot be revoked or cannot be terminated because of any reason whatsoever except because said power has already been implemented, or because the period there-of has expired as referred to in paragraphs (3) and (4).

(3) The Power of Attorney, imposing the Underwriting right concerning the already registered right on land, shall be followed by the drawing up of the Underwriting Right Provision Deed, at the latest 1 (one) month after it is given.

(4) The Power of Attorney, imposing the Underwriting Right on land not yet registered, shall be followed by the making of a Underwriting Right Provision Deed, at the latest 3 (three) months after it is given.

(5) The provisions as referred to in paragraphs (3) and (4) are not valid in case the Power of Attorney imposing the Underwriting Right, is provided to guarantee certain credits as stipulated in the prevailing legislative regulations.

(6) The Power of Attorney imposing the Underwriting Right, not followed by the drawing up of an Underwriting Right Provision Deed within the stipulated time as referred to in paragraphs (3) and (4), or the time stipulated according to the provisions as referred to in paragraph (5), is cancelled by Law.

Article 16

(1) If the receivables, guaranteed by Underwriting Right, are transferred because of cession, subrogation, inheritance, or other reasons, then said Underwriting Right is also transferred by law to the new creditor.

(2) The transfer of the Underwriting Right as referred to in paragraph (1) shall he registered by the new creditor at the Land Affairs Office.

(3) The registration of the transfer of the Underwriting Right as referred to in paragraph (2), is conducted by the Land affairs Office, by entering it in the Underwriting Right land book and the land book on the right on land, which is an Underwriting Right Object, and copying said entrance on the Underwriting Right certificate and the certificate of the right on the land concerned.

(4) The date of the registration in the land brink as referred to in paragraph (3), shall be the date, seven days after the documents, required for the registration of the transfer of the Underwriting Right, have been completely received. and if the seventh day happens to be a holiday, then the registration shall he given the date of the following working day.

(5) The transfer of an Underwriting Right shall start to be effective for third parties on the date of the registration as referred to in paragraph (4).

Article 17

The form and contents of the Underwriting Right Provision Deed, the form and contents of the Underwriting right land book, and other matters in connection with the procedures for the Underwriting Right Provision and Registration, shall be stipulated and implemented, based on the Government Regulation as referred to in Article 19 of Act Number 5 of 1960 on Basic Regulation of Agrarian Principles.

Article 18

(1) Underwriting Rights are void, because of the following matters:

a. the abolishment of an Underwriting Right guaranteed debt;

b. the release of the Underwriting Right by the Holder there-of;

c. the cleansing/clearing of the Underwriting Right, based on the ranking stipulation by the Chairman of the District Court;

d. the abolishment of the right on land, imposed with an Underwriting Right.

(2) The abolishment of the Underwriting Right, because it is released by the holder, is conducted by giving a written statement concerning the release of said Underwriting Right by the holder of the Underwriting right, to the underwriting right provider.

(3) The abolishment of the Underwriting Right because of the cleansing/clearing of an Underwriting Right, based on the ranking stipulation of the Chairman of the District Court, occurring because of the request of the purchaser of the right on the land imposed with an Underwriting Right, in order that the right on the land lie has bought is cleansed from the burden of the Underwriting Right as regulated in Article 19.
(4) The abolishment of the Underwriting Right because of the abolishment of the right on land, imposed with an Underwriting right, shall not cause the abolishment of the insured guaranteed money.

Article 19

(1) The purchaser of an Underwriting Right Object in a public auction on the order/instruction of the Chairman of the District Court as well as in a voluntary transaction, can request the holder of the Underwriting Right to cleanse/clear the object he has bought, from all burdens of the Underwriting Right, exceeding the purchase price.
(2) The cleansing of the Underwriting Right Object from the burden of the Underwriting Right as referred to in paragraph (1), shall be conducted with a written statement from the Underwriting Right Holder, containing the release of the Underwriting right, burdening the Underwriting Right Object, exceeding the purchase price.
(3) If the Underwriting Right object is burdened with more than one Underwriting Right and there is no agreement among said Underwriting Right Holders concerning the cleansing of the Underwriting Right Objects from the burden exceeding the purchase price there-of as referred to in paragraph (1), then the purchaser of said Object can forward a request to the Chairman of the District Court whose jurisdiction territory comprises the location of the Underwriting Right Object concerned, to stipulate the cleansing, and simultaneously the provisions on the distribution of the auction sale proceeds among the creditors and their ranking, according to the prevailing legislative regulations.
(4) The request for cleansing of an Underwriting right object from a burdening Underwriting Right as referred to in paragraph (3), cannot be conducted by the purchaser of said Object, if such purchase is conducted in a voluntary transaction and in the Underwriting Right Provision Deed concerned, the parties have clearly agreed, that the Underwriting Right Object will not be cleansed from the burden of the Underwriting Right as referred to in Article a 1 paragraph (2) letter f.

CHAPTER V
EXECUTION OF THE UNDERWRITING RIGHT

Article 20

(1) If a debtor fails to meet his liabilities, then based on:

a. the first right of the Underwriting Right Holder to sell the Underwriting; Right Object as referred to in Article 6, or

b. the executorial title, contained in the Underwriting Right certificate as referred to in Article 14 paragraph (2), the Underwriting Right Object shall be sold through, a public auction, according to the procedure as stipulated in the legislative regulations for the settlement of receivables of the Underwriting Right Holder with preemptive right from other creditors.

(2) On the agreement of the Underwriting right Provider and Holder, the sale of an Underwriting Right Object can be conducted privately, if in this way the highest price could be obtained, profitable for all parties.
(3) The implementation of the sale as referred to in paragraph (2), can only be conducted, after the lapse of 1 (one) month's time, after a notification in writing by the Underwriting Right Provider and/or Holder to interested parties, and announced at least in 2 (two) daily newspapers circulating in the regions concerned and/or in the local mass media, and if there is no party stating a disagreement.
(4) Any promise to conduct an Underwriting Right execution in a way contradictory to the provisions in paragraphs (1), (2) and (3), is cancelled by law.
(5) Up to the moment the auction announcement is issued, the sale as referred to in paragraph (1), can be avoided by the settlement of the insured debt with an Underwriting Right, including the execution costs, already spent.

Article 21

If the Underwriting Right Provider is declared as bankrupt, the Underwriting Right Holder continues to he competent to execute all rights he has obtained, according to the provisions of this act.

CHAPTER VI
DELITION OF THE UNDERWRITING RIGHT
Article 22

(1) After the Underwriting Right is abolished as referred to in Article 18, the Land affairs Office shall delete the registration of said Underwriting right from the land book of the rights on land and the certificates thereof.
(2) With the abolishment of the Underwriting Right, the Underwriting right Certificate concerned is withdrawn and together with the land book of the Underwriting right is declared as no longer effective by the Land affairs Office.
(3) If the certificate as referred to in paragraph (2), because of any reason, is not returned to the Land affairs Office, then said matter shall be recorded in the Underwriting right Land Book.
(4) The request for deletion as referred to in paragraph (1), shall be forwarded by the interested party, by attaching the Underwriting right Certificate, which is already provided with a note from the creditor, that the Underwriting Right is abolished, because the receivables, of which the settlement is guaranteed by an Underwriting Right, are already settled, or because of a written statement of the creditor, that the Underwriting Right is already abolished, because the receivables of which the settlement is guaranteed by Underwriting Right, are already settled, or because the creditor has released the Underwriting Right concerned.
(5) If the creditor is not willing to give the statement as referred to in paragraph (4), then the interested party can forward a request for said deletion order to the chairman of the district Court, of which the Jurisdiction territory comprises the location where the Underwriting Right concerned is registered.
(6) If the request for the deletion order arises from a dispute being processed at another District Court, then said request shall be forwarded to the Chairman of the District Court, processing the case concerned.
(7) The request for deletion of an Underwriting Right registration, based on the order of a District Court as referred to in paragraphs (5) and (6), shall be forwarded by the Head of the Land Affairs Office, by attaching a copy of the stipulation or decision of the District court concerned.
(8) The Land Affairs Office conducts a deletion of the registration of an: Underwriting Right according to the procedures at provided in the legislative regulations in force, within 7 (seven) working days, effective as of the date the request as referred to in paragraphs (4) and (7), has been received.
(9) If the settlement of the debt is conducted by way of settlement as referred to in Article 2 paragraph (2), then the Abolishment of the Underwriting Right at the part of the Underwriting Right Object concerned, shall be registered in the land book and on the Underwriting Right certificate, and the land book and certificate of the right on land already released from an Underwriting Right, which has been imposed there-on.

CHAPTER VII
ADMINISTRATIVE SANCTIONS
Article 23

(1) An Official, violating or negligent in the fulfillment of the provisions as referred to in Article 11 paragraph (1), Article 13 paragraph (2) and Article 15 paragraph (1) of this Act and/or the implementation regulations there-of, can be imposed with an administrative sanction, constituting:
   a. an oral reprimand;
   b. a written warning;
   c. a suspension from his position;
   d. a discharge from his position.
(2) An Official, who violates-or is negligent in meeting the provisions as referred to in Article 13 paragraph (4), Article 16 paragraph (4) and Article 22 paragraph (8) of this Act and/or the implementation regulations there-of, can be imposed with an administrative sanction, in accordance with the provisions of the prevailing legislative regulations.
(3) The imposition of the sanctions as referred to in paragraphs (1) and (2), shall riot prejudice the sanctions, which can be imposed according to the other prevailing legislative regulations.
(4) Further provisions on the administrative sanctions as referred to in paragraph (1), shall be stipulated by Government Regulation.

CHAPTER VIII
TRANSITION PROVISIONS
Article 24

(1) The Underwriting Rights existing before the effectiveness of this Act, using the Mortgage provisions or the Credit-relationship based on Article 57 of Act Number 5 of 1960 on Basic Regulations of Agrarian Principles are acknowledged, and shall further prevail as Underwriting Rights according to this Act through the end of said Rights.
(2) The Underwriting Rights as referred to in paragraph (1), can use the provisions concerning the execution and deletion there-of as regulated in Articles 20 and 22, after the land book and certificate on the Underwriting Right concerned have been adjusted to the provisions as referred to in Article 14.
(3) A power of attorney, imposing an existing mortgage at the moment of the promulgation of this Act, may be used as a Power of Attorney Imposing an Underwriting Right, within 6 (six) months effective as of the moment of the effectiveness of this Act, with due observance of the provisions as referred to in Article 15 paragraph (5)

Article 25

As far as not in contradiction to the provisions in this Act, all legislative regulations concerning the imposition of an Underwriting right, except the provisions as referred to in Article 29, shall continue to be effective up to the stipulation of the implementation regulations of this Act, and in the application there-of shall be according to the provisions in this Act.

Article 26

As long as there is no legislative regulation for the regulation there-of, with due observance of the provision in Article 14, the regulation concerning the execution of a mortgage existing at the moment of the effectiveness of this Act, shall be effective towards the execution of the Underwriting Right.

CHAPTER IX
CONCLUDING PROVISIONS
Article 27

The provisions of this Act are also effective towards the imposition of the Underwriting Right on Flats and the Property Right on Flat Units.

As far as not otherwise stipulated in this Act, the further provisions to implement this Act, are stipulated by legislative regulations.

Article 29

With the effectiveness of this Act, the provisions on credit relationship as referred to in State Gazette 1908-542 jo. State Gazette 1909-586 and State Gazette 1909-584 as already amended by State Gazette 1937-190 jo. State Gazette 1937-191 and the provisions on Mortgage as set forth in Book 11 of the Civil Code of Indonesia as long as it concerns the imposition of are Underwriting Right on the right on land including objects in connection with land, are declared as null and void.

Article No. 28 is missing in the original text.

Article 30

This Act can be called the Act on Underwriting Right.

Article 31

This Act shall be effective as of the date of promulgation.

For the information of the public, it is instructed to promulgate this Act by inserting it in the State Gazette of the Republic of Indonesia.

Stipulated in: Jakarta on 9 April 1996
Promulgated in: Jakarta on 9 April 1996

THE PRESIDENT REPUBLIC INDONESIA
sgd
SOEHARTO

STATE MINISTER/SECRETARY OF THE REPUBLIC OF INDONESIA
sgd
M O E R D I 0 N 0