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Land ownership in Indonesia for foreign citizens

*Habib Adjie*¹

Universitas Narotama, Surabaya, Indonesia

Abstract

In Indonesia, the legal framework has numerous laws and regulations that control the land management and ownership. The laws are associated with the different kind of land titles comes under different terms and conditions. Distinctly, the laws are different for both the natives and the foreigners. The recent amendments in legal frameworks captured the attention of scholars. The research by following the current research trends investigated the different land policies and regulations for the foreigners set by Indonesian Government. The researcher adopted normative juridical research approach to examine the current status, limitations, and opportunities in laws and regulations which impact the land ownership and rights of foreigners. By adopting qualitative research method, the data is collected from both the primary and secondary data. Through the content analysis, the findings are extracted. According to the results, the legal framework poses numerous regulatory barriers for the foreigners which leads to illegal land management and ownership by foreigners. In order to improve the residential and business conditions for foreigners, the facilitations should be enhanced for the improved foreigner land ownership. The study provided in-depth insights into the legal framework and provided recommendations that would prove effective in boosting foreign investments in Indonesia.

Keywords: Land ownership, foreign citizen, Indonesian law

1. Introduction

Land ownership in Indonesia was a challenging task for the foreigners in some previous decades, which should be addressed critically to provide legal rights to the foreigners so that they could buy property in the country. Consequently, the foreigners are highly restricted to some stringent rules while buying property in Indonesia and it is necessary for them to completely stick to the law and orders in the country before buying any property in an informed way. Additionally, the Indonesian land ownership law has been pursued on the basis of the Dutch civil code from 1838, which has been imitated from the Napoleon and the Dutch-Roman law (Brealey, 2021). Moreover, in 1847, the civil code from Dutch became the Dutch Indies civil law and is now utilized as the Indonesian civil code for the foundation of the law. After the year 1960, the

¹ Faculty of Law, Universitas Narotama, Surabaya, Indonesia.

Email correspondence: adjieku61@gmail.com

Dutch civil law had numerous reforms, which were explicitly reorganized on the basis of the Agrarian law 5 of 1960 and thus impacted by the constitution of 1945 and the socialism aspect of Indonesia. However, the Indonesian land ownership law was totally founded on the Agrarian Law.

There are numerous kinds of property ownership in Indonesia, which include the leasehold ownership and freehold ownership, where the freehold ownership refers to continuous and permanent ownership of the land and leasehold ownership incorporates the hold of the property for a specific time duration (Harfiana, 2023). Moreover, on the 21st March, 2016, the Minister of the Agrarian Affairs in Indonesia and the Spatial Layout has articulated an advanced Minister of the Agrarian Law number 13, which primarily aimed to formulate the strategies for providing, renouncing, and transferring the land ownership of the residential land to the foreign citizens of Indonesia if they are domiciled in the country (AYMP, 2023). However, foreigners are only able to buy and own some particular kinds of lands in Indonesia, which involves apartments and condominiums on the basis of a specific criteria and conditions for a duration of 30 years. Consequently, the current investigation is focusing on maximizing the foreigner land ownership rights in Indonesia because this may also benefit the economic stability of Indonesia.

In addition, two basic rights are provided to the foreigners in case of land ownership in Indonesia, i.e., 1) *Hak Pakai* and 2) *Hak Milik*, which give them the rights for using an individual built house or apartment that could be occupied on the basis of an agreement only and in case of a newly bought apartment or house their status is termed as *Hak Milik Atas Satuan Rumah Susun di Atas Hak Pakai*, which refers to giving rights to the foreigners for using the newly bought houses and apartments under some specific conditions (Makarim & Taira S., 2023). Contrary to this, the undertaken study purposes to provide some feasible rights regarding the land ownership to the foreigners in Indonesia to strengthen its infrastructure. According to the Law number 5 of 1960 in Indonesia, thus focusing on the Basic Agrarian Law, it could be entailed that the customary law of Indonesia is a legal land ownership law and is modified according to the choices and requirements of the international individuals (Sumanto, 2021). Consequently, the Indonesian government has paid attention on determining the customary land rights by focusing on the National Land Law of Indonesia.

Therefore, the aim of this study is to explore the rights reserved by the Indonesian government for the foreigners regarding the land ownership because of the excessive number of the foreign job holders in the country. The study is based on a detailed introduction about the rules and regulations followed by the Indonesian government then and now regarding the land ownership rights of foreigners in the country, which will be followed by the methodology and the literature review comprising a critical analysis of the land ownership rights for foreigners from a global aspect accompanied with the analysis of land ownership rights given by Indonesia. These critical aspects will be evaluated in the analysis chapter for providing recommendations to modify the law and orders regarding the foreign land ownership concepts, which will be succeeded by the conclusion, implications and limitations of the undertaken study within the context of Indonesia.

2. Method

The aim of the present study is to examine the nature of laws for land ownership in Indonesian foreign citizens. In light of this research objective, the researcher employed the qualitative research techniques. The current study aims to develop a strong conceptual base on the Indonesian land ownership rights for the foreign citizens. The theoretical understanding is developed on different reality facets of legal dimensions that cover the property rights laws in the respective country. To investigate the research method, the inductive research technique was used. The choice of this research approach is suitable and aligns with the qualitative choice of the researcher. As the study is explanatory in nature, the qualitative research design along with the inductive research approach is appropriate for the present study. Moreover, the researcher has also adopted the normative juridical research method for the data collection. In the legal and law studies, this approach provides a way for acquiring data that is most suitable for the secondary data studies. The primary and secondary data are collected from the relevant and credible sources. Different official documents containing the information about the laws, rules, and regulations are as primary data while on the other hand academic journals, articles, and books are used for extracting secondary data. The online databases like JSTOR, Wiley Online, Lexis, and West Law were approached to get the required information. Obtaining the data from these resources provides a broader legal outlook on the property land ownership legal framework in Indonesia. After obtaining sufficient data, the research adopted content analysis approach to analyze the data. The content analysis enables the researcher to quantify and analyze the presence of meanings, and relationships of certain concepts within the text (Lindgren, Lundman, & Graneheim, 2020). The approach therefore provides a suitable analysis strategy to examine different facets of the reality portrayed through written data. On the basis of content analysis of data, the findings are extracted, and results are drawn.

3. Literature Review

Providing rights of land ownership to the foreigners is a major concern of the researchers nowadays because it provides the main chance for the countries across the globe to become economically stable by allowing the foreign investors to have a land ownership within the country. Numerous advantages are considered while providing the land ownership rights to the foreigners globally (as explained in Table 3.1).

Contrary to this, numerous countries have provided land ownership rights to the foreigners in order to get advantages regarding their domestic economies. In Australia the occupations and the property that could be owned by the foreigners are dependent on the Foreign Acquisition and Takeover Act of 1975 along with the Foreign Acquisition and Takeover Laws of 2015 (Australian Government, 2022). According to this law, the foreign individuals should have a considerable right to show interest in the security of the property, could provide a notifiable interest in the Australian property after fulfilling the desired requirements by the host country, and could also take a notifiable national security action regarding the property, which is based on notifying the interest in the acquisition of a national security land at the time of occupation (Pyburne, 2023). Moreover, the foreigners could only build one residence on the residential land of Australia. However, a broader scope is yet to be

researched regarding the land ownership rights provided by Indonesia to the foreigners.

Table 3.1: Benefits of providing land ownership rights to the foreigners in host country.

Benefits of providing Land ownership rights to Foreigners	
Transfer of Technological Know how	It is believed that the foreigners are responsible for bringing new and innovative technologies with them to the host countries, which may result in a firm distribution within the local economy of the country. Moreover, when they are provided rights to own land in the host country, they bring a beneficial atmosphere for the country.
Enhance the domestic economy	The foreign investors are the primary resources to boost the economy of the country and allow the sharing of knowledge to the local economy of the host country.
Provide foreign investors with ownership security	In case of the ownership of an organizational land, it could be entailed that when foreigners are provided with a complete land ownership, they are highly devoted to the security of the company, which builds the confidence on the foreigners.

Source: (Samuel, 2022)

Additionally, the United Kingdom has imposed no significant ban on the land ownership rights of the foreigners from various countries throughout the world. However, the country has imposed a single restriction for the foreign individuals regarding the property ownership in the United Kingdom, which provides the foundation for the fact that the “overseas individuals which are owing any land or property in the country should provide a confidential evidence for the beneficial owners of their occupied property” (gov.uk, 2022) and it should be recorded on the list of the Overseas Entities (legislation.gov.uk, 2022). This is because without having a record on the Overseas Entities, the foreign individuals are not allowed to buy, sale, lease, or claim their property in the United Kingdom. Contrary to this, same is the case in Norway regarding the laws and regulations for the foreign individuals to own land, as they are not bound to any kind of prohibition while buying, selling, or leasing any residential property in Norway. On the other hand, if the foreign individuals want to have an ownership of a certain business or an organization then they are subjected to have a security interest for the country and this should be informed to the National security of Norway to avoid any kind of threat or damage to the security of the country. However, this law is still under review by Norway’s government and refers to a secure foreign direct investment (Vesterkjær & Dahl, 2023).

Moreover, the government of Japan has not enforced any limitations regarding the land ownership of foreigners in the country. A previous law was executed in Japan named the Act on Foreign National's Rights in Relation to Land, according to which the Japanese government could restrict the occupation of the land ownership rights for the foreign individuals on the basis of a cabinet order, but this law has not been endorsed up till now. However, in 2021, a law has been passed by the government according to which the foreigners were unable to own the land around is remote islands to ensure the security of the country (CabinetOfficeOrderNo.56, 2022). However, the Indonesian government has imposed numerous rules and regulations for the foreign individuals which makes it difficult for them to live in the country. Despite the Agrarian law, the Indonesian government has imposed a law regarding the cultivation land of Indonesia, according to which only the Indonesians or the Indonesia domiciled citizens could own the cultivation land and on the other side the HM land, which is the strongest land ownership title in Indonesia could only be bought, sold, or leased by the Indonesian national individuals, i.e., the personnels whose rights are termed as the inheritable rights (Situmorang & Putri, 2022). Moreover, according to the government regulation 18 of 2021, it was easier for the foreigners to occupy real estate in Indonesia (Medina, 2021) and according to this regulation the tenant foreigners in Indonesia could own HP land over HM land the HP land which has been formulated after the conversion of HM or the HGB land.

4. Results

4.1 Land ownership legal framework

The interpretation of Indonesian legal framework is accompanied with basic understanding of the land titles. On general terms, the land titles in Indonesia are comprised on eight different rights which cause ambiguity for the foreign investors and citizens in dealing with the land management issues. The inherit concept of land ownership for foreign citizens can thus be understood from the common conception of land titles and their implications on the activities of foreign citizens (Kubitza et al., 2018). The land ownership of foreign citizens can be understood by the legal basis of the Indonesian legal framework comprising on different laws and regulations. The constitutional status of the land ownership is preserved in the Constitution of Republic of Indonesia of 1945. The fundamental concept of owner is clearly stated in the constitution that implies further interpretation of the land ownership matters. According to the "Article 33 paragraph (3) of 1945 Constitution", the water, land, and natural resources in Indonesia are under the authority of state and can only be controlled and regulated by the state for the prosperity of the citizens (Suseno, 2019). This provides the initial basis of understanding the power of state authorities in managing the land ownership rights and facilitating the natives and foreign citizens. Under the state authorities, the citizens are given the right to own the land on certain terms and conditions which need to be fulfilled. It is clearly stated in the constitution that:

"Every person shall have the right to own personal property, and such property may not be unjustly held possession of by any party."

However, the foreign citizens are still distinct and have certain limitations in terms of personal rights and authority to own the land. The other laws and regulations that

are essential in understanding of the foreign citizen land rights include the Agrarian Law. The Law No. 5 of 1960 on Fundamental Regulation of Agrarian Principles provides a detailed insight on the legal dealings that are involved in the land ownership and rights. The understanding of Job Creation Law is also linked with the foreign citizenship rights and land management by foreign business investors. The Law No. 11 of 2020 on Indonesian Job creation Law is noteworthy in this regard. Recently a new policy was consolidated that is GR No. 18 of 2021 on Land Rights, Land Management, and Land Registration. Besides that, the GR No. 38 of 1963 on Appointment on Legal Entities having Land Ownership Right and National Land Agency Regulation No. 18 on Spatial Planning and management clarifies the acts and clauses involved in land ownership of foreign citizens. The detailed examination of these laws and regulations is provided below.

4.2 Agrarian Law and Foreign Citizen Land Ownership

The Agrarian Law of Indonesia recognizes eight different types of land ownership which clarifies the status and nature of land rights and types of ownership. The eight type of land ownership include 1) *Hak Milik* (The real ownership right), 2) *Hak Guna Bangunan* (Building Use Right), 3) *Hak Guna Usaha* (Cultivation Right), 4) *Hak Pakai* (Utilization Right), 5) *Hak Sewa* (Lease Right), 6) *Hak Membuka Tanah* (Land Clearing Right), 7) *Hak memungut hasil hutan* (Rights to collect forest products, 8) Other rights. In terms of foreign citizens' land ownership, the lease right and the different form of right of use holds significant importance. For the residential purpose, the citizens have equal opportunity to hold the land rights. The provision of this right is granted in the Article 9 of Law Number 5 of the Basic Agrarian Law. According to that, the Indonesian citizens have the right to own the resources in every form. In respect of that, every Indonesian citizen has the right to obtain the property, however, the transfer of property rights for the foreign citizen is prohibited. The terms and conditions thus imply that the government grants land tenure rights to the foreigners only in the form of lease rights and other form of land utility for the business purpose. The land ownership with the property rights is declared hereditary right for the natives' citizens, but in response to the national land law policy, the foreigners are not allowed to inherit property rights in the territory of Indonesia. However, the foreigners are often indulged in the "Nominee Agreement" by taking the Indonesian native as the Nominee to register as owner of the respective land. However such kinds of practices are also prohibited in Law Number 5 of the Basic Agrarian Law, according to the Article 26 (2) (Nisa, 2023). However, it is also observed that the legal sanctions against nominee practice were not clear in the law which makes it ambiguous and more prevailing in the Indonesian Foreign land management dealings.

The foreigners right concerning the land use and ownership can be explained further in context of business practices in Indonesia. The Act No. 5 of 1960 regulates the rights at different situations on different terms that include the *Hak Guna Bangunan*, *Hak Guna Usaha*, and *Hak Pakai*. According to the building right on land, the duration of 30years property right is given to the foreign citizens, which is extendable for 20 years according to the article 30 Act No. 5. This property right despite of the other can be transferred to the other person characterized as Hypothec Right. However, there are certain conditions attached to it including the legal status

of the business (Hidayanti, Koswara, & Gunawan, 2021). According to the lease rights, any Indonesian legal entity has the right to lease other land associated with the citizens and foreigners (Agustina, 2018). It is an established understanding that the leasehold enables the lessee to retain the property rights on the basis of leasehold agreement. However, the Indonesian government does not issue the leasehold certificates.

Recently, the government regulations and the initiatives taken by the Land Authorities and Department of Agricultural Land Use, the job and employment creation according to the Law No.11 of 2020 sparked the controversial status of land ownership rights for the foreigners. Despite of yielding economic benefits, the limitations in the Agrarian Law restrict the foreigners to hold back in obtaining maximum production capacity for the foreigners' investment. The regulatory barriers are still restricting the foreigner investors and becoming problematic in managing the land rights (Sumanto, 2021). Although the Land Law No. 11 of 2020 clearly stated the property rights, land registration, and government regulation no 2021, the foreign ownership and property rights are still controversial in Indonesia. In the recent years, a noteworthy provision has been observed under the Government Regulation 18 of 2021, the foreigners are now entitled to own land houses, and apartments. However, the terms and conditions associated with it must be observed strictly in order to avoid the legal issues. As per the legal conditions, the foreign citizens are only allowed to have land ownership at certain conditions in certain areas. The localities are specified for the foreigners' i.e., special economic zones, trade zones, and industrial states. Moreover, under the same law, there is also diversity on the provincial level. The variations in the application of legal rules regarding the land registration procedure as per the Government Regulation No. 18 of 2021 reveal that the land management and supervision still need to be clarified in order to improve the land conditions for the foreigners (Rahdania & Djaja, 2023). The management rights, flat units, land rights, and registration should be revised under legal effect. The new regulations are thus replacing the existing regulatory regimes for the provision of business and residential ownership rights for the domiciled foreigners in Indonesia.

5. Recommendations

There are numerous challenges and setbacks in regulatory mechanism of land ownership for the foreign citizens. In order to improve the legal and law situation of land management for foreigners in Indonesia, there are certain recommendations which can prove effective in future for longer terms.

- The first challenge which is identified in the legal framework is the terms and conditions of the land ownership which is observed under different Laws and Acts. However, there are distinct policies for the residential ownership and business or investment ownership. The legal framework should clarify the two-foreigner ownership conditions and regulate policies accordingly. The more attention should pay to the business activities and investments in the Indonesian territory. In order to improve the economic conditions, it is recommended that the terms and conditions for foreign investors should be revised to facilitate the business activities.
- According to GR No. 18 of 2021, the employment creation condition is getting better in Indonesia. The reformations are proposed by Land Management

Authorities and the initiatives were taken by the State authorities to maximize the land ownership facilities for the foreigner. The legal procedure should be improved in this regard. Moreover, the legislative bodies should acknowledge their responsibilities in minimizing administrative challenges, managing right transfer issues and transactions involving the land ownership.

- Due to the regulatory barriers and land ownership limitations, the growing ratio of illegal activities in the form of Nominee agreements is becoming problematic for the government. In order to avoid such practices, the government should facilitate the foreigners in terms of land ownership. The amendments are required in the legal framework which can avoid the land conflicts and management issues. Moreover, the land corruption and illegal ownership are becoming more prevalent due to the strict land laws and policies. These complications and challenges therefore call for the improvement in legal bodies and demand a balanced approach to deal with the foreigners' interest in land ownership.

6. Conclusion

The basic legal framework for land management and ownership consists of multiple laws and regulations. The laws and regulations in context of foreign land ownership are different from the native ownership. To examine the legal principles, the understanding of foreign citizen law is essential. The researcher collected data from the primary and secondary sources including the legal documents, academic journals, and websites for acquiring novel data regarding the research problem. Through content analysis, it is identified that the legal framework poses numerous challenges for the foreign citizens. According to the basic Agrarian Law, the essential land ownership rights are given to the foreigners on certain terms and conditions. However, there are regulatory barriers that are becoming problematic for the foreign citizens, especially the business investors. In terms of Residential land ownership management, the legal framework has the utility but due to economic expansion in Asian regions, the business land ownership for the foreign investors should be improved. In context of Job creation Law and GR No. 18 of 2021, the improvements can be made on legislative level to facilitate the foreign citizens by providing land ownership relaxation.

7. Research Implications

On the basis of its findings, the study has both theoretical and practical implications which depict the study's contribution and usefulness in different relevant areas.

7.1 Theoretical Implications

The study has provided significant insights on the legal problems and complications of the land rights for the foreign citizens. By explaining the identifying the pertaining issues, the study can be seen as a comprehensive framework of the legal literature covering these issues. By reviewing the previous literature bodies and scholarly studies, the current study provides theoretical understanding of the issue. Even though the huge literature is produced on the legal rights of the property ownership of foreign citizens, the different methodological choices of the researcher provided a novel and comprehensive insight on the land's legal issue. The researcher

clarified the limitations and opportunities in legal framework which can improve the law and legislation regarding foreign citizen's land rights. Moreover, as the study emphasized on the legal issues, it contributed valuable information to the ongoing research stream on land rights in Indonesia. By contributing to the previous literature, the researcher has enriched the regional literature by covering the issues from multiple dimensions. By fulfilling the research gaps and covering them by providing a broader legal picture of the issue, the researcher strengthened the scholarly base and made a room for the future investigations on the similar issues.

7.2 Practical Implications

On the practical grounds, the study has practical significance and policy implications that prove the utility of the study for multiple stakeholders. The findings imply that the land rights for foreign citizens need to be taken into consideration. The legal authorities should focus on the limitations which pose challenges for the foreign citizens to manage land ownership. As the growing ratio of business investment and residential growth in Indonesia demands strong land frameworks, the setbacks in the legal layout can be a big challenge for the foreigners' settlement in the respective country. The study by examining the laws and regulation raise the call for the relevant stakeholders to acknowledge their responsibility and resolve the law complications. Moreover, it also gained the attention of legislative bodies to play their part in facilitating the foreigners in settling land issues with minimum legal constraints. By improving the legal management issues, the government can elevate the struggles of the foreign citizen. The property rights management, reducing the administrative delays, and facilitating the payment matter can improve the landowner situation for the foreign citizens.

8. Limitations and Future Indication

The researcher covered multiple aspects of property rights from the legal and law perspective. The research study, despite of having multiple contribution contain certain limitations. The methodological choice of the researcher is limited on few areas. The researcher adopted normative judicial research approach and qualitative research methods to investigate the research problem. Different results can be obtained by opting for different methodological choices. The improvements can be made by analyzing the statistical data and adopting quantitative research methods. Moreover, the inclusion of secondary data can put the study under subjective criticism which can be reduced by obtaining whole data from the credible primary sources. The data quality and availability can be improved. Moreover, land rights legal framework in Indonesia varies and have different regulation on the national, local, and regional level. As the study only emphasized on the cover issues, it is hard to broaden the study's findings and generalizability. The regional specification and focus also limit the scope of the study. The land property legal complication for foreign citizens is the major issue in both the Asian and European regions. The study does not represent the challenges on a different level which narrow down the findings to the Asian region. Future researchers can analyze these issues in different regional contexts to get a comparative picture of the issue.

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