

The Study of Ownership Property Regulation by Foreigners in Indonesia

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Abstract—Regulations on land ownership in Indonesia are regulated in Basic Agrarian Law (UUPA) No. 5 of 1960. The regulation is the legal basis about right to land using for Indonesian citizens and foreign nationals. The purpose of this study provides an overview of the regulation of property ownership by foreigners in Indonesia and its application. This type of research is normative juridical and survey research. Normative juridical research is a study of the content and conceptual approaches of statutes. The survey review concerns the application of regulations on land in Indonesia for foreigners. The result of the research explained that there is a dynamics of regulation. Initially, a foreigner can own property with right of use for 25 years with an extension of 25 years and when expiration can be renewed for 20 years. The enactment of a new regulation states that foreigners may own a property with 80 years of use right (initial use rights of 30 years, a 25-year extension and 25 years renewal and may be inherited). The foreigner granted the right is a foreigner domiciled in Indonesia and has a residence permit. The results of the survey study reveal that there are various forms of violation of the land ownership regulation.

Index Terms—Land ownership; foreigner right; violation of regulation.

I. INTRODUCTION

One part of human rights is an economic right or the right of everyone to own a good and use it. Various actions that can be done is to buy and sell goods and take advantage of personal property. An individual who has economic rights is entitled to try and earn a decent living with the use of goods or resources. Theoretically, there are various types of property rights, namely the right of individual ownership, the right of state ownership and the right of communal ownership. These three types of different forms differ by the owner of authority over the goods. Individual ownership rights that a person controls assets and has the authority to utilize, rent or sell them. Furthermore, there is also an asset that belongs to the state, or its utilization is the responsibility of the state. Communal ownership rights are assets owned by a particular group and are non-displacement.

The community has the right to utilization in two ways. Administration of the right of rights issued by the government. Various regulatory instruments are issued by governments to regulate the right to resources. The state is obliged to regulate and protect private property rights for its citizens. The regulation also relates to the protection of resources against improper utilization. The history of the regulation on property ownership rights begins with Law no. 5 of 1960 on Agrarian Principles (UUPA). Furthermore, the government issued Government Regulation no. 41 of 1996 which regulates the possibility of private ownership or occupancy by foreigners. In further developments, the Government of Indonesia amends the regulation by issuing Government Regulation no. 103 of 2015 concerning Ownership of Residential Homes or Shelters by Foreigners Based in Indonesia. The foreigner, in this case, is not an Indonesian citizen whose existence provides benefits, conducts business, works or invests in Indonesia.

Countries around the region have increasingly sought to attract foreign buyers and have adjusted the rules to make property ownership more attractive to non-local. In Indonesia, the situation is far less clear, regarding both foreign ownership and property rights in general. In Thailand, there is a lack of regulation about the foreign property. Many cases of the foreigner from Singapore and Malaysia were property investors and renters of Thailand [1].

Ownership of foreigners to property in Indonesia will bring some advantages. The ease of access to the property that was required so many expats who are interested in buying a house in the country. Moreover, foreigners are also given the ease of purchasing a property that will increase state revenues, because it provides additional income and tax income for each purchase. This way could be one attraction for foreign investors to bring in their money into the country, to be invested in the property [2], [3].

The regulatory dynamics of property rights lead to an increase in assets owned by foreign nationals. However, in reality, there are various facts of violation. By this, the legal review of the dynamics is the focus of this study.

II. RESEARCH METHOD

This type of research is normative juridical using the primary legal material in the form of legislation that regulates the property ownership by foreigners in Indonesia. The research approach uses statute approach (statute approach) and concept approach (conceptual approach). The technique of systematic interpretation analysis that is the material of law related to property by foreigner interpreted systematically. Supporting studies on the facts of application and violation of the law are carried out through documentation from various sources.

III. RESULT AND DISCUSSION

Regulation of Ownership Property in Indonesia

Land ownership rights in Indonesia are regulated in Law No. 5 of 1960 on Basic Agrarian Principles. The description of property rights for Indonesian citizens and foreigners is described in table 1

Table 1. Content of Law 5 of 1960

The right	Content	Explanation
Indonesian citizens are entitled to own land	Article 21: Only Indonesian Citizen owns land ownership or may be related to the earth and space by not distinguishing between men and women and fellow citizens of both indigenous and Indonesian origin	All citizens are both native citizens as well as citizens of descendants
foreign nationals	Article 36: Foreign nationals have the right to use the building	The right applies to a legal entity established by law in Indonesia.
	Article 30: Foreign nationals have the right to operate	
	Article 42: Foreign nationals have the right to use	The usage rights mean that foreigner can be used to create a residence. Parties that can be granted the right to use are Indonesian citizens, including foreigners domiciled in Indonesia

The further development of the regulation is Government Regulation no. 41 of 1996 concerning ownership of houses, dwellings or occupancy by foreigners (table 2).

Table 2. The contents of Government Regulation no. 41 of 1996

The right	Content	Explanation
The right to use for foreigners domiciled in Indonesia and its presence in Indonesia provides benefits for National development.	Article 2: Residential or residential homes that may be owned by a foreigner: A stand-alone house built on a plot of land. Unit of Flats built on the plot of Rights of Use on State land.	Foreign nationals have the right to use on state land. Its control is based on an agreement with the holder of the land rights.

The alienation of property to a foreigner in the regulation includes the requirement that an agreement between a foreigner and the holder of the land title be recorded in the relevant land title certificate. The term of the agreement shall not exceed twenty-five years. The agreement may be extended for a period of less than twenty-five years as long as the foreigner remains in Indonesia.

If the foreigner is no longer domiciled in Indonesia, then the disposal of the rights of the other party shall take place. Furthermore, the government issued Government Regulation no. 103 The year 2015 on Housing Ownership Shelter for Foreigner In Indonesia. This policy is instead of Government Regulation No. 41 of 1996. The contents of the regulation are outlined in table 3.

The dynamics of the regulation explains that foreigners have asset ownership rights at different levels. In recent regulation, even foreigners can own assets without time constraints as long as there is a marriage bond with Indonesian citizens. Furthermore, the Government through the Ministry of Agrarian and Spatial Layout issued the Regulation of the Minister of Agrarian and Spatial / Head of National Land Agency Republic of Indonesia Number 29 The year 2016 Concerning Procedures for the Provision, Release, or transfer of the right to ownership of shelter or residence by a foreigner in Indonesia. In the regulation, improved mechanism of granting, disposal, and transfer of rights over ownership of a residential house or residence owned by a Foreigner. Specific rules are outlined in table 4.

Table 3. The contents of Government Regulation no. 103 The year 2015

The right	Content	Explanation
The right to use for foreigners who domiciled in Indonesia and its presence in Indonesia provide benefits, do business, work, or invest in Indonesia.	Article 2 Paragraph (1) : Foreigners can own a house for shelter or occupancy with right to Use	Foreign nationals have the right to use on state land. Its discretion is based on an agreement with the holder of the land rights.
The right to use for foreign withholding residence permit in Indonesia by the provisions of the legislation. Foreigners may bequeath to their heirs who also have residence permits in Indonesia by the provisions of the legislation.	Article 2 Paragraph (2) : A Foreigner who can own a residential house or residence of a resident permit holder in Indonesia by the provisions of the legislation. Article 2 Paragraph (3) and (4): The Foreigner can inherit his property to the heirs. With the condition of the warlord must have permission to stay in Indonesia by the provisions of the legislation.	Foreign nationals have the right to use on state land and may pass on to their heirs who are also foreign citizens
Property rights for Indonesian citizens engaged in marriage with foreign nationals	Article 3 paragraph (1) that Indonesian citizen who carries out a marriage with a stranger may have rights to the same land as other Indonesian citizens.	Opportunity for foreign nationals who marry Indonesian citizens to have a house or land

Table 4. Implementation guidelines on the right of ownership for foreigners

Mechanism	Content	Explanation
Granting rights to foreigners	Article 3 Paragraph (1): A Foreigner may have a house for shelter or occupancy with Right to Use	Foreign nationals have the right to use on state land. Its control is based on an agreement with the holder of the land rights.
The right of use for foreign citizens holding a residence permit in Indonesia by the provisions of the legislation.	Article 3 Paragraph (2) : A foreigner may be transferred to his heirs who also has a residence permit in Indonesia by the provisions of the legislation.	Foreign nationals have the right to use on state land and may pass on to their heirs who are also foreign citizens
Restrictions on property owned by foreigners	Article 4 paragraph (5) that the minimum price limit that a foreigner can have (status of use rights) depends on the territory. Other limitations: a. one plot of land per person/family; and b. The land is the widest of 2,000 (two thousand) square meters.	Price restrictions, amount and extent of property owned by foreigners.

The implementation and violation of property ownership regulations in Indonesia

Based on data from various sources explained that there are various properties such as land, houses, apartments, and hotels. Ownership of various violations described in Table 5.

Table 5. Property Ownership by Foreigners in Indonesia

No.	Location	Violation	Source Data
1.	Lombok	Ownership of property by foreigners using the name of the original person of the region (investment by foreigners by unlawfully)	https://radarlombok.co.id
2.	Papua	Freeport has taken over the customary land of the Amungme tribe without a deal with the Amungme tribe.	http://nasional.kompas.com/read/2017/02/24/16342521
3.	Bali and Lombok	Foreigners are marrying indigenous women of the region with a mode of owning land in Indonesia with property rights.	(http://jktproperty.com/pemerintah-akan-tertibkan-tanah-milik-wna-di-bali-dan-lombok/)
4.	land and forest	Foreigners apply for a Special Economic Zone license to create a Special Economic Green Zone (Green KEK) with a term of 99 years and renewable, while the normal for foreign ownership of property is in the form of right to use with a period of 30 years	https://www.kompasiana.com/situmorangganda/modus-orang-using-mencaplok-lahan..
5.	Bali	Foreigners rent land in the long term without paying taxes Foreigners marry Balinese girls to avoid applying for foreigners the right to use.	https://ekbis.sindonews.com/read/697266/34/regulasi-kepemilikan-properti-asing-mendesak-diubah-1355392942

Based on the above description, the regulation of asset ownership for foreign nationals is carefully arranged. However, the regulation still considers the foreigners who work and invest in Indonesia.

Discuss

Government Regulation is a clear distinction between new and old is the period of ownership of the property. The term of a single house based on the new regulation is 30 years and renewable for 25 years. If the extension period expires, it can be renewed for 30 years so that the total duration is taken foreigners is 80 years, in contrast to Government Regulation previous 70 years with a 25 year period, an extension for 20 years and can be renewed for 25 years [4].

IV. CONCLUSION

The dynamics of the regulation explains that foreigners have asset ownership rights at different levels. In recent regulation, even foreigners can own assets without time constraints as long as there is a marriage bond with Indonesian citizens. Some violations of property rights occurred in Indonesia as an attempt to control land.

REFERENCES

- [1] A. Jeffreys, O. B. Group, P. Kuncinas, and P. Grimsditch, *The Report: Indonesia, 2013 : Economy, Banking, Energy, Transport, Infrastructure, Tourism, Real Estate, Telecoms & IT, Industry, Capital Markets, Construction, Interviews*. Oxford Business Group, 2013.
- [2] S. Douma, R. George, and R. Kabir, “Foreign and domestic ownership, business groups, and firm performance: Evidence from a large emerging market,” *Strateg. Manag. J.*, vol. 27, no. 7, pp. 637–657, 2006.
- [3] P. K. Chhibber and S. K. Majumdar, “Foreign ownership and profitability: Property rights, control, and the performance of firms in Indian industry,” *J. Law Econ.*, vol. 42, no. 1, pp. 209–238, 1999.
- [4] J. Abbink, “‘Land to the foreigners’: economic, legal, and socio-cultural aspects of new land acquisition schemes in Ethiopia,” *J. Contemp. African Stud.*, vol. 29, no. 4, pp. 513–535, 2011.