



ANALYSIS OF LAND OWNERSHIP RESTRICTIONS FOR FOREIGNERS ACCORDING TO INDONESIAN LAW AND THAILAND LAW

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Article Info

ABSTRACT

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Land is a strategic resource closely linked to state sovereignty, public welfare, and economic stability. In the context of globalization and increasing foreign investment, Southeast Asian countries face the challenge of opening their property markets without undermining national interests. This study aims to analyze restrictions on foreign land ownership under Indonesian and Thai law and to compare the legal approaches of both countries. This research applies a normative legal method using statutory and comparative approaches. The findings indicate that Indonesia allows limited foreign access through use rights and condominium ownership, whereas Thailand maintains a stricter prohibition on direct land ownership by foreigners, allowing only narrow exceptions. Both countries seek to protect national land sovereignty but differ in their level of openness to foreign property investment.

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1. INTRODUCTION

Land is one of the most important elements in the life of a country because it is directly related to the continuity of community life, economic stability, and national sovereignty. In the context of developing countries like Indonesia and Thailand, land is not only understood as an economic commodity but also as a means to achieve social justice and the prosperity of the people. Globalization and the increasing flow of foreign investment have heightened the interest of foreign nationals in controlling and owning land in various Southeast Asian countries, thereby creating complex legal and political issues.

On one hand, foreign investment is needed to drive economic development, growth in the property sector, and the provision of jobs. However, on the other hand, if not strictly regulated, land ownership by foreign nationals can threaten national sovereignty and reduce local communities' access to land resources. Therefore, the restriction of land ownership by foreign citizens becomes an important instrument in modern land law.

In Indonesia, the principle of agrarian nationalism is reflected in Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA), which explicitly limits land ownership rights to Indonesian citizens only. Foreign citizens are only granted limited rights, such as the right to use and the right to build for a certain period. This policy was then adjusted thru Law Number 6 of 2023 on Job Creation and Government Regulation Number 18 of 2021, which allows foreign citizens to own apartment units on land with the status of usage rights. This change marks a shift in Indonesia's policy toward being more open to foreign investment in the property sector.

Meanwhile, Thailand maintains a more protective approach. Based on the Land Code Act, foreign nationals are generally prohibited from owning land directly, except under certain circumstances, such as thru investment facilities with government approval and specific area limitations. In practice, many foreigners use long-term leasehold schemes or local companies as a means to control land, although this practice is closely monitored by the Thai government.

The difference in approaches between Indonesia and Thailand shows a variation in policies in facing the pressures of globalization. Indonesia tends to accommodate the needs of the international property market, while Thailand places more emphasis on national land protection. This condition is interesting to analyze comparatively to understand how the law can function as a balancing tool between investment interests and national sovereignty.

2. RESEARCH METHODS

This research uses the normative legal research method, which is based on the study of written legal norms and legal doctrines that regulate the restriction of land ownership by foreign nationals in Indonesia and Thailand. This method was chosen because the main objects of the research are legislation, land policy, and legal concepts regarding land rights and their holders.

The approach used in this research is the statute approach and the comparative approach. The statute approach is conducted by examining Law Number 5 of 1960 on the Basic Agrarian Law, Law Number 6 of 2023 on Job Creation, and Government Regulation Number 18 of 2021 in Indonesia, as well as the Land Code and Foreign Business Act in Thailand. The comparative approach is used to analyze the similarities and differences in the regulations on land ownership restrictions by foreign nationals in both countries, so that the characteristics and policy trends of each legal system can be identified.

The data sources used in this research are secondary data, which consist of primary legal materials and secondary legal materials. Primary legal materials include Indonesian and Thai regulations governing land ownership and foreign investment. Secondary legal materials include books, scientific journals, research results, and publications from international organizations published in the last five years that are relevant to the issue of land ownership restrictions by foreigners.

Data collection techniques were carried out thru library research, both offline and online. Offline library research was conducted by searching for legal books and journals in university libraries, while online library research was conducted by accessing journal databases, official government websites, and international institutions to obtain regulations and the latest studies related to land ownership by foreigners.

Data analysis is conducted using normative qualitative analysis, which involves interpreting and elaborating on legal materials based on the meaning of norms, legal principles, and their intended purposes. Data is analyzed thru the process of legal interpretation, systematization of norms, and legal comparison to reveal how restrictions on land ownership by foreigners are applied in Indonesia and Thailand, as well as their implications for national sovereignty and the investment climate.

3. RESULT AND ANALYSIS

Regulation of Land Ownership by Foreign Nationals According to Indonesian Law and Thai Law Regulation According to Indonesian Law

In the Indonesian legal system, land holds a very strategic position because it is directly related to the sovereignty of the state and the welfare of the people. This principle is derived from Article 33 paragraph (3) of the 1945 Constitution, which states that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This constitutional provision then became the basis for the formation of Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA) as the main foundation of national land law. The Basic Agrarian Law (UUPA) adheres to the principle of nationality, which states that the strongest legal relationship to land can only be owned by Indonesian citizens. Therefore, Article 21 paragraph (1) of the UUPA emphasizes that ownership rights over land can only be held by Indonesian citizens, while foreign nationals are prohibited from holding ownership rights. This prohibition aims to prevent foreign control of land, which could reduce access for the Indonesian people to land as a source of livelihood.

However, Indonesian law does not completely close the possibility for foreign nationals to utilize land. Article 42 of the UUPA provides a legal basis for granting the right to use land to foreign nationals residing in Indonesia. The right to use is the right to use and/or collect the results from land controlled by the state or land owned by others for a certain period. This right is limited and does not grant full authority as ownership does, thus maintaining the principle of agrarian nationalism.

The development of Indonesia's land policy shows an adjustment to the dynamics of globalization. Thru Law Number 6 of 2023 on Job Creation and Government Regulation Number 18 of 2021, the government has provided broader opportunities for foreign nationals to own apartment units built on land with the status of use

rights. This policy is intended to enhance the attractiveness of investment in the property sector and support national economic growth, particularly in major cities and tourist areas.

This policy is not without criticism; several academics argue that this openness has the potential to shift the main objective of the UUPA, which is to protect the interests of the Indonesian people over land. In practice, foreign nationals often use intermediaries who are Indonesian citizens or national legal entities (nominees) to indirectly control land. This leads to de facto control by foreign parties even though the land is formally registered under the name of Indonesian citizens. This condition shows that the main challenge lies not only in legal norms but also in supervision and law enforcement.

Regulations According to Thai Law

Thailand implements a stricter land law system to limit land ownership by foreign nationals. Based on the Land Code Act, only Thai citizens are fundamentally entitled to full land ownership. Foreigners are generally prohibited from owning land as a form of protection for national sovereignty and domestic economic stability.

Thai law also provides limited exceptions, primarily for investment purposes. Through specific provisions such as Section 96 bis of the Land Code, foreign nationals who invest a minimum of 40 million Baht can own land with a maximum area of one rai, provided they obtain approval from the Minister of the Interior and the land is used for specific purposes, such as residence or business.

In addition to that mechanism, foreigners in Thailand more often gain access to land through long-term lease agreements that can last up to 30 years and can be extended. This scheme does not legally grant ownership, but it provides economic control over the land for a considerable period. Additionally, many foreign investors establish Thai companies with majority shares held by Thai citizens to acquire land rights, although this practice is under strict government scrutiny.

Thailand's legal approach demonstrates a strong orientation toward national land protection. The state strives to ensure that land ownership remains in the hands of its citizens, while foreign investment is facilitated selectively and in a controlled manner.

Similarities and Differences in Regulations on Land Ownership by Foreign Nationals in Indonesia and Thailand

Normatively, Indonesia and Thailand share a fundamental similarity in viewing land as a strategic asset that must be protected from foreign domination. Both prohibit land ownership with freehold status by foreign nationals as a form of protection for national sovereignty. Both Article 21 paragraph (1) of Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA) and the Land Code of Thailand place citizenship as the primary requirement for full land ownership. Thus, foreign nationals are not allowed to have the strongest and fullest legal relationship with land in the territories of Indonesia or Thailand.

In addition, both countries also provide limited access to foreign nationals through certain legal mechanisms. Indonesia uses a system of use rights and ownership of apartment units, while Thailand uses a leasehold system and investment-based exemptions. Thus, both adopt a model that combines national protection with limited openness to investment. The policy reflects the state's efforts to protect national sovereignty and ensure that land ownership remains in the hands of its citizens.

There is a main difference in the level of flexibility of the policy. Indonesian law provides limited access to foreign nationals through certain land rights, specifically the right to use. This is regulated in Article 42 of the UUPA and reinforced through Government Regulation Number 18 of 2021, which allows foreign nationals residing in Indonesia to use state land or land owned by others for a certain period, including for ownership of apartments on land with use rights. The regulation shows that Indonesian land law maintains the principle of nationalism, but is adaptive to the developments of globalization and investment needs, without undermining the state's sovereignty over land. In the Thai land law system, ownership of land by foreign nationals is generally not permitted. The policy reflects the state's efforts to protect national sovereignty and ensure that land ownership remains in the hands of its citizens. However, Thai law provides very limited exceptions, as stipulated in Section 96 bis of the Land Code, which allows foreigners to own land with a maximum area of one rai, provided they make a minimum investment of 40 million Baht, obtain approval from the Minister of Interior, and use the land for residential purposes. This exception is selective and rarely applied in practice.

In addition to direct land ownership, foreign nationals in Thailand are granted limited access through the mechanism of condominium unit ownership and long-term lease agreements. Based on the Condominium Act B.E. 2522, foreign nationals are allowed to own apartment units with a maximum limit of 49% of the total building area in a single building, but this right does not include ownership of the land on which the building stands. This regulation shows that Thai law continues to regard land as a strategic asset that must be protected, while also providing limited space for foreign investment. Thus, it can be concluded that Thai law adopts a more restrictive approach in regulating land ownership by foreign nationals compared to Indonesia.

This difference shows that although both countries have the same goal of protecting land sovereignty, they choose different legal strategies in facing the pressures of globalization and foreign investment.

4. CONCLUSION

The regulation of land ownership by foreign nationals in Indonesia and Thailand essentially prohibits ownership of land rights. Indonesia enforces this prohibition through the principle of nationality in the Basic Agrarian Law, while Thailand emphasizes it in the Land Code Act. Nevertheless, both countries still provide limited access to foreign nationals through certain mechanisms, namely the right to use and ownership of apartment units in Indonesia, as well as long-term lease agreements and ownership of condominium units in Thailand, as a form of compromise between land sovereignty protection and investment needs.

The main similarity between Indonesia and Thailand lies in the protection of national land by closing access to ownership rights for foreign citizens, while the difference lies in the level of policy flexibility. Indonesia tends to be more open, especially after the enactment of the Job Creation Law, by expanding property ownership opportunities for foreign citizens. On the other hand, Thailand maintains a more restrictive and selective approach, only granting exceptions under certain investment-based conditions. This difference shows that although both countries have the same goals, the legal strategies they pursue differ in responding to globalization and foreign investment.

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