

Legal Framework Governing Foreign Property Ownership in Indonesia's Special Economic Zones

Elsi Kartika Sari^{1*}, Ninuk Wijiningsih², Ahmad Sabirin³

¹² Universitas Trisakti, Indonesia

³ Co-founder & Researcher of Sustainovate, Melbourne, Australia

*Correspondence: elsi.ks@trisakti.ac.id

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Abstract

This study aims to examine the tension between the principle of nationality in the Basic Agrarian Law (UUPA) which limits the ownership of land rights to Indonesian citizens and the new policy providing access to property ownership for foreign nationals in Special Economic Zones (SEZs) through the Job Creation Law, Government Regulation Number 18 of 2021, and Decree of the Minister of ATR/BPN Number 1241 of 2022. Even though various studies have discussed the regulation of property ownership by foreign nationals, few studies analyse the constitutional implications and normative consequences of extending rights on the basis of nationality as the foundation of Indonesian agrarian law. Normative legal methods are used through legislative and conceptual approaches, with qualitative analysis of primary and secondary materials. The novelty of this study lies in the use of Progressive Law theory, combined with the perspectives of legal certainty and constitutional identity, to interpret the relationship between the UUPA and the post-Job Creation Law regulations. Furthermore, expanding access to property ownership for foreign nationals does not necessarily alter the principle of nationality; rather, it represents a limited reinterpretation to support investment and economic development goals. The results show that the current regulations allow foreign nationals to own landed houses and flats in SEZs, subject to certain requirements, such as minimum price limits, land area, ownership limits, and legal immigration status. However, various limitations remain in place, including restrictions on the type of land rights, location of ownership, and surveillance mechanisms to prevent speculation and safeguard state sovereignty. In this context, regulatory harmonisation is needed to ensure legal certainty while maintaining Indonesia's constitutional identity in agrarian governance amid the demands of global investment liberalisation.

Keywords: foreigners; legal reform; property; special economic zones.

Abstrak

Penelitian ini bertujuan untuk mengkaji ketegangan antara prinsip kewarganegaraan dalam Undang-Undang Pokok Agraria (UUPA) yang membatasi kepemilikan hak atas tanah hanya bagi warga negara Indonesia, dengan kebijakan baru yang memberikan akses kepemilikan properti bagi warga negara asing di Kawasan Ekonomi Khusus (KEK) melalui Undang-Undang Cipta Kerja, Peraturan Pemerintah Nomor 18 Tahun 2021, dan Keputusan Menteri ATR/BPN Nomor 1241 Tahun 2022. Meskipun berbagai penelitian telah membahas pengaturan kepemilikan properti oleh warga negara asing, masih sedikit kajian yang menganalisis implikasi konstitusional dan konsekuensi normatif dari perluasan hak tersebut terhadap prinsip nasionalitas sebagai fondasi hukum agraria di Indonesia. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan peraturan perundang-undangan dan konseptual, melalui analisis kualitatif terhadap bahan hukum primer dan sekunder. Kebaruan penelitian ini terletak pada

penggunaan teori Hukum Progresif yang dipadukan dengan perspektif kepastian hukum dan identitas konstitusional untuk menafsirkan hubungan antara UUPA dan regulasi pasca-UU Cipta Kerja. Penelitian ini berargumen bahwa perluasan akses kepemilikan properti bagi warga negara asing tidak serta-merta menggeser prinsip nasionalitas, melainkan merepresentasikan reinterpretasi yang terbatas untuk mendukung tujuan investasi dan pembangunan ekonomi. Hasil penelitian menunjukkan bahwa regulasi terkini memungkinkan warga negara asing memiliki rumah tapak dan satuan rumah susun di KEK dengan persyaratan tertentu, seperti batas harga minimum, luas tanah, jumlah kepemilikan, serta status keimigrasian yang sah. Namun demikian, berbagai pembatasan tetap diberlakukan, termasuk pembatasan jenis hak atas tanah, lokasi kepemilikan, serta mekanisme pengawasan untuk mencegah spekulasi dan menjaga kedaulatan negara. Penelitian ini menyimpulkan bahwa harmonisasi regulasi diperlukan untuk menjamin kepastian hukum sekaligus menjaga identitas konstitusional Indonesia dalam tata kelola agraria di tengah tuntutan liberalisasi investasi global.

Kata kunci: orang asing; properti; reformasi hukum; zona ekonomi khusus.

Introduction

The demand for property among foreign nationals has increased in recent years, particularly in tourism areas and locations with high economic activity, including Special Economic Zones (SEZs).¹ This increase is in line with increased foreign direct investment (FDI), international labour mobility, and global business activity.² As an investment destination in Southeast Asia, Indonesia continues to attract foreign investors, increasing demand for housing and property among foreign nationals.³ SEZs established under Law Number 39 of 2009 are strategic instruments for promoting investment, economic growth, and job creation through various fiscal and non-fiscal incentives.⁴ The government provides wider access for foreign nationals to own certain properties in SEZs to increase investment attractiveness. However, this policy has sparked debate because the concept could conflict with the principle of nationality, which underpins Indonesian agrarian law.⁵

¹ Andrés Rodríguez-Pose and others, 'The Challenge of Developing Special Economic Zones in Africa: Evidence and Lessons Learnt', *Regional Science Policy & Practice*, 14.2 (2022), 456–82 <<https://doi.org/10.1111/rsp3.12535>>.

² Radha Aulia Putri, 'Investment Law and Realized Investment in Indonesia: An Empirical Legal Analysis of Regulatory Reform, Institutional Quality, and Capital Formation in 2019–2025', *Indonesian Journal of Law, Governance, and Regulation*, 1.1 (2026), 30–47.

³ Yoram Z. Haftel, 'Conflict, Regional Cooperation, and Foreign Capital: Indonesian Foreign Policy and the Formation of ASEAN', *Foreign Policy Analysis*, 6.2 (2010), 87–106 <<https://doi.org/10.1111/j.1743-8594.2010.00103.x>>.

⁴ Annisa Syifa Qolby and Wiwiek Rukmi Dwi Astuti, 'Indonesia's Economic Diplomacy in Increasing Halal Product Exports through the Organization of Islamic Cooperation (2020–2024)', *Insignia: Journal of International Relations*, 11.2 (2024), 166 <<https://doi.org/10.20884/1.ins.2024.11.2.12887>>.

⁵ Explanation of Law No. 39 of 2009

The facility provided in the SEZ concerns land rights and property ownership to meet foreigners' needs. In the UUPA, there is a Nationality Principle, the main principle, under which only Indonesian Citizens have the right to hold land rights. Therefore, the UUPA limits the possibility of foreigners holding certain land rights.⁶ The phrase "Foreigners domiciled in Indonesia," hereinafter referred to as "Foreigners," means individuals who are not Indonesian citizens and whose presence in Indonesia provides benefits through engaging in business, employment, or investment activities.⁷

The UUPA adopts the Principle of Nationality, as stipulated in Article 9(1), under which only Indonesian citizens may enjoy a full legal relationship with land. Restrictions on land rights for foreigners are set out in Article 42 of the UUPA, which provides that foreigners and foreign legal entities with representatives in Indonesia are eligible only to hold the Right to Use (*Hak Pakai*). This limitation is reaffirmed in Article 39 of Government Regulation No. 40 of 1996.

According to Article 41 of the UUPA, the Right to Use (*Hak Pakai*) grants the holder the authority to derive benefits from land directly controlled by the State or owned by another person. This right arises through a decision issued by the competent authority or an agreement with the landowner. However, the agreement must not constitute a lease and must comply with applicable laws and regulations. Unlike ownership rights, the Right to Use confers only limited rights to use the land for specific purposes and under conditions prescribed by law.

Under Article 4, letter b, of Government Regulation No. 103 of 2015, foreign nationals may own flats built on *Hak Pakai* land plots. Meanwhile, the requirements for foreigners' ownership of residential houses are set out in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 7 of 1996. The law states that Foreigners whose presence benefits national development may own a residence with rights to certain land or a flat unit.⁸ There has been a change in property ownership for foreigners with the enactment of the Job Creation Law, which allows them to own property rights in flats and houses.

A previous study titled "Land ownership in Indonesia for foreign citizens" by Habib Adjie (2023) provides an overview of the legal framework governing land ownership by foreign citizens, particularly in areas such as SEZs, as well as trade and industrial zones. This study used a qualitative approach and conducted content analysis of existing regulations. The results show that many regulatory barriers lead to illegal land ownership practices, even though foreigners have

⁶ Raudah Rosalia, 'Validity of Land Rental Agreement for Foreign Nationals' Borrowing Practices', *Alanddin Law Development Journal*, 7.1 (2025), 81–94 <<https://doi.org/10.24252/aldev.v7i1.53975>>.

⁷ Article 1 number 1 of Government Regulation Number 103 of 2015 on Ownership of Residential Houses or Residences by Foreigners Domiciled in Indonesia.

⁸ Article 1 paragraph 1 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 7 of 1996

opportunities to own property. Recommendations are also provided to facilitate foreign property ownership and increase investment in Indonesia.⁹

Sari and Reykasari (2024) provided an overview of the legal aspects of apartment unit ownership by foreign nationals in SEZs. Based on Government Regulation Number 18 of 2021, this study examines how the regulation grants foreigners the right to use apartment units and is expected to promote foreign investment, economic growth, and the development of the property sector. The economic benefits and the need for strict supervision are also reviewed to prevent foreign ownership from interfering with national interests.¹⁰

Although various studies have examined the legal framework for property ownership by foreign nationals in Indonesia, few have examined the constitutional implications of expanding foreigners' rights in SEZs. The presence of the Job Creation Law develops normative tension between the principle of nationality regulated in Articles 9 and 21 of the Basic Agrarian Law (UUPA) and the state's goal of attracting foreign investment to promote economic growth. These tensions raise a fundamental question: Is the expansion of property ownership rights for foreigners a reinterpretation of the principle of nationality, or does the context reflect a shift away from constitutional identity in agrarian governance? A theoretical contribution is made to the broader debate on how developing countries balance economic liberalisation policies with constitutional commitments to maintain sovereignty over land and agrarian resources by analysing these issues from the perspective of legal certainty and constitutional identity.

The novelty of this study is in the analysis of the normative conflict between the principle of nationality in the UUPA and the policy of investment liberalisation in the Job Creation Law through the perspective of legal certainty and constitutional identity. In contrast to previous investigations focused on the procedural aspects of property ownership, this study evaluates the constitutional implications and normative consequences of agrarian law reform in SEZs.

Methods

This study employs a normative juridical method, focusing on legal norms and principles governing the ownership of flats in SEZs, using both statutory and conceptual approaches. The approach to laws and regulations includes analysing and comparing the provisions of the Basic Agrarian Law, the Job Creation Law, and various implementing regulations governing land rights and flats in SEZs. Meanwhile, a conceptual method is used to examine the doctrines, legal

⁹ Habib Adjie, 'Land Ownership in Indonesia for Foreign Citizens', *International Journal of Criminal Justice Sciences*, 18.2 (2023), 1–11.

¹⁰ Eriza Yulistiana Sari and Yunita Reykasari, 'Juridical Study of Ownership of Ownership of Flats by Foreign Citizens Based on Government Regulation Number 18 of 2021 Concerning Land Rights Management Rights for Flats Units and Land Registration', *Indonesian Journal of Law and Justice*, 2.1 (2024), 8 <<https://doi.org/10.47134/ijlj.v2i1.3116>>.

principles, and scholars' views on legal certainty, land rights regimes, and regulatory coherence.¹¹ This descriptive-analytical study explains the applicable legal provisions and systematically analyses the normative consistency and juridical implications of the regulations. The consistency of norms and potential regulatory conflicts between the general agrarian law regime and the special arrangements in SEZs is examined using legal interpretation and systematic analysis.¹² Furthermore, the secondary data used is obtained from the literature. The data consists of primary legal materials, such as laws, regulations, and official state documents, as well as secondary legal materials, including scientific literature, journal articles, and legal experts' opinions. Data were analysed using juridical qualitative analysis, with an emphasis on the quality of normative argumentation and doctrinal coherence rather than on the quantity of data. Conclusions are drawn by a deductive method, namely by reducing general legal principles and normative provisions to a more specific regulatory context to formulate normative results and legal recommendations.¹³

Result and Discussion

Can Foreigners Own Property in Indonesia's SEZs?

Indonesia is inhabited by Indonesian citizens and a significant number of foreign nationals. The increasing presence of foreigners, driven by globalisation and expanding international economic and social activities, has created a need for legal and administrative facilities that accommodate the residence, employment, business, and investment activities in Indonesia. An important aspect of land law is the legal relationship between land and other objects. Legal certainty regarding the object's legal status is very important, as it has a broad influence on all legal relations concerning the land and the attached object.¹⁴

A common understanding of land rights should be established to address the question above. As discussed earlier, land rights are closely associated with the objects attached to the land. In legal terms, these rights are granted by the State to individuals, groups, or legal entities, including both Indonesian citizens and foreign nationals permitted by law to control, use, or exercise legally recognised interests in land in accordance with the applicable legal framework.

¹¹ Anna Maria Tri Anggraini, Ahmad Sabirin, and Yoel Nixon A Rumahorbo, 'The Form and Pattern of Business Actors Requirements in Exclusive Dealing: A Rule of Reason Approach', *Yustisia Jurnal Hukum*, 12.2 (2023), 107 <<https://doi.org/10.20961/yustisia.v12i2.73316>>.

¹² Setiyono Setiyono and others, 'Has Indonesia Safeguarded Traditional Cultural Expressions?', *Jambura Law Review*, 6.2 (2024), 206–39 <<https://doi.org/10.33756/jlr.v6i2.24106>>.

¹³ Dinda Keumala and others, 'Indonesia's Sustainable Green Economy Policy in the Energy Sector: Challenges and Expectations', *Jurnal Media Hukum*, 32.1 (2025), 1–20 <<https://doi.org/https://doi.org/10.18196/jmh.v32i1.24109>>.

¹⁴ Betty Rubiati, 'Kepemilikan Rumah Susun Umum Yang Dibangun Di Atas Tanah Barang Milik Negara/Daerah', *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An*, 6.2 (2023) <<https://doi.org/10.23920/acta.v6i2.1337>>.

The holder of land rights is given the authority to use the land or take the associated benefits. The State is authorised to determine the land rights that can be owned or granted to individuals, and the law is in line with the specified requirements.¹⁵

There has been a significant change in the regulation of foreign nationals' property ownership in the region following the establishment of SEZs under Law Number 39 of 2009. SEZs are designated areas with specific boundaries for conducting economic activities, featuring various special facilities to attract foreign investment in land and property.

The enactment of Law Number 11 of 2020 on Job Creation, updated by Law Number 6 of 2023, provides a new legal basis and various facilities for SEZs. The main objectives of the Job Creation Law are to improve the investment ecosystem and business activities, strengthen the protection and welfare of workers, facilitate and empower cooperatives and MSMEs, and increase government investment in and the implementation of national strategic projects.¹⁶ This regulation broadens opportunities for foreigners to own property and affirms the role of SEZs as a driving force in advancing national economic development through more streamlined, integrated investment.¹⁷ The policy objectives for the land sector in the Job Creation Law include increasing the effective and efficient use of land. Productivity and economic growth can increase significantly with more optimal land management. In addition, the Job Creation Law also aims to increase legal certainty in land use, which is important for building investor trust. This is expected to promote greater investment in the land sector, positively impacting national economic growth.

The Job Creation Law promotes investment in the land sector to improve people's welfare.¹⁸ Business actors and investors can use land for business and development activities with clearer, more flexible regulations. This is expected to create new jobs, strengthen the regional economy, and support equitable development across Indonesia.

Several important changes to land regulation previously governed by the Basic Agrarian Law have been made with the implementation of the Job Creation Law. These changes include providing greater land use flexibility to support investment and economic growth, as well as extending the term of the Building

¹⁵ Tri Widiyono and Md Zubair Kasem Khan, 'The Legal Philosophy And Justice Values In The Acquisition Of Land Rights In Indonesia: A Normative Legal Research', *International Journal of Law Reconstruction*, 6.2 (2022), 278 <<https://doi.org/10.26532/ijlr.v6i2.26841>>.

¹⁶ Arinto Nugroho et al, 'The Impact of Labor Law Reform on Indonesian Workers: A Comparative Study After the Job Creation Law', *Lex Scientia Law Review*, 8.1 (2024) <<https://doi.org/10.15294/lslr.v8i1.14064>>.

¹⁷ Explanation of the Law. No. 11 of 2020 on Job Creation

¹⁸ Anna Sanders and others, 'The Omnibus Law on Job Creation and Its Potential Implications for Rural Youth and Future Farming in Indonesia', *Asia Pacific Viewpoint*, 65.2 (2024), 248–62 <<https://doi.org/10.1111/apv.12408>>.

Use Rights to better suit development needs.¹⁹ In SEZs, this law allows foreign nationals to own residences or properties, with facilities for the renewal of the Right of Use up to 80 years after legal ownership. In addition, land-use efficiency is a key focus for sustainably increasing productivity and economic growth.²⁰

The changes to the Job Creation Law and Government Regulation No. 28 of 2021 expanded regulations governing foreigners' ownership of residential houses, which were previously governed by the Basic Agrarian Law and Government Regulation No. 41 of 1996. This law was replaced by Government Regulation Number 103 of 2015 concerning the Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia, and by the Minister of ATR/BPN No. 29 of 2016 concerning Procedures for Giving, Release, or Transfer of Rights to Ownership of Residential Houses.

The Basic Agrarian Law (UUPA) is a fundamental regulation governing land in Indonesia, where ownership rights may be held only by citizens, as outlined in Articles 9 and 21 of the UUPA.²¹ The prohibition on foreign property ownership is emphasised to maintain the nation's sovereignty and welfare. However, the UUPA provides an exception under Article 26, paragraph (2), which allows foreigners to own land with limited use rights in both time and extent. The Right to Use (*Hak Pakai*) is the right to derive benefits from land directly controlled by the State or owned by another person. Under Article 42 of the UUPA, the concept is the only land right granted to foreign nationals, subject to the conditions and limitations prescribed by Indonesian law.

The Right to Use may be granted to certain subjects, including foreign nationals domiciled in Indonesia, for a period as stipulated in Government Regulation Number 40 of 1996. This includes a maximum of 25 years, extendable for 20 years, and subject to renewal. Foreigners can hold use rights as a form of limited ownership that permits the use of land for residential or business activities. This system strikes a balance between upholding the principle of nationalism in land tenure and providing space for legal, controlled foreign investment.²²

Article 49(2) of Government Regulation No. 40 of 1996 concerning Business Use Rights, Building Rights, and Rights to Use Land specifies the subjects eligible to obtain the Right to Use (*Hak Pakai*) for a fixed period, as referred to in Article 49(1)(a). Under this provision, the Right to Use may be

¹⁹ Ni Ketut Suartining and Benny Djaja, 'Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960', *Journal of Social Research*, 2.6 (2023), 1775–85 <<https://doi.org/10.55324/josr.v2i6.903>>.

²⁰ Yin Ma and others, 'Land Use Efficiency Assessment under Sustainable Development Goals: A Systematic Review', *Land*, 12.4 (2023), 894 <<https://doi.org/10.3390/land12040894>>.

²¹ Cecep Miptahuddin, 'The Problem of Ownership of Land Rights Is Reviewed Based on the Law and Government Regulations', *Advances In Social Humanities Research*, 2.5 (2024), 784–803 <<https://doi.org/10.46799/adv.v2i5.250>>.

²² Article 49 paragraph 1 Government Regulation No. 18 of 2021

granted to: (i) Indonesian citizens, (ii) legal entities established under the law and domiciled in Indonesia, (iii) foreign legal entities with representatives in Indonesia, (iv) religious and social organisations, and (v) foreign nationals.²³ Therefore, the Right to Use is not limited to Indonesian citizens but also extends to various legal entities and foreign individuals who meet the criteria.²⁴ This provision provides a clear and flexible legal basis for land management, specifically for investment and land use by foreigners and legal entities.

Right of Use allows parties to use state-controlled land or land owned by others for various purposes, including development and business activities. This is important for promoting investment, particularly in SEZs, where foreign nationals' property ownership is regulated by special provisions governing the extension and renewal of the Right of Use.²⁵ In addition, Article 49 paragraph (2) serves as the legal basis for regulating the Extension or Renewal of the Right of Use, in accordance with applicable regulations, to provide legal certainty and flexibility for rights holders in managing land. In this context, the government can accommodate the needs of various parties to increase investment and development, while maintaining regular land management in accordance with applicable laws and regulations.²⁶

In Article 2, Paragraph (1) of Government Regulation No. 103 of 2015, foreigners can own a house for residence with the Right of Use. For residential properties owned by foreign nationals, ownership is limited to newly acquired apartment units constructed on land held under Right of Use.²⁷ Meanwhile, the Right to Use Building is regulated in Articles 35 and 40 of the UUPA. This confers the right to erect and own a building on land that does not belong to an individual.²⁸ The right covers a maximum period of 30 years and may be extended by up to 20 years.

²³ Karin Erliza Butar-Butar and Bambang Eko Turisno, 'Juridic Review Of Granting Rights To Flat Units To Foreign Citizens Based On The Provisions Of Legislation In Indonesia', *Awang Long Law Review*, 4.2 (2022), 409–18 <<https://doi.org/10.56301/awl.v4i2.454>>.

²⁴ Safira Ayudiatrri and Akhmad Budi Cahyono, 'The Legality of Grants by Foreign Citizens on Land Objects in Indonesia: Case Studies of Court Decisions', *SIGn Jurnal Hukum*, 4.1 (2022), 30–45 <<https://doi.org/10.37276/sjh.v4i1.131>>.

²⁵ IGN. Supartha Djelantik, I Nyoman Putu Budiarta, and Hartini Saripan, 'The Right on Land for Foreigner and Foreign Legal Entity Tourism Investasion Perspective, Participation and Nominee Practice Prevention', *Journal Equity of Law and Governance*, 2.1 (2022), 69–85 <<https://doi.org/10.55637/elg.2.1.4693.69-85>>.

²⁶ Basri, 'Land Rights and Legislation: Uncovering the Veil of Property Law in Indonesia', *Ilomata International Journal of Social Science*, 5.1 (2024), 105–23 <<https://doi.org/10.52728/ijss.v5i1.1060>>.

²⁷ Syamsuddin Pasamai and Salle Salle, 'Customary Rights Versus Land Use Rights', *Devotion : Journal of Research and Community Service*, 5.12 (2024), 1577–85 <<https://doi.org/10.59188/devotion.v5i12.25377>>.

²⁸ Article 35 of the UUPA

The Period of Validity of Building Rights (HGB) grants the holder the authority to erect and own a building on a piece of land for a specified period. HGB can be granted only to citizens and legal entities established under the law and domiciled in Indonesia, in accordance with the provisions of the UUPA and Government Regulation Number 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration. This confirms that foreign nationals cannot directly own HGB on land in Indonesia. However, domiciled foreigners who hold a residence permit, as well as foreign legal entities with a representative in Indonesia, are not eligible for direct issuance. These individuals can own the right of use or property in the form of flats (apartments) on land with HGB status or right of use, in accordance with the special provisions governing property ownership.

HGB has become a legal instrument more limited in use for foreign citizens. In contrast, foreign legal entities and foreigners can take advantage of the right to use as an alternative to property ownership. The term of the HGB is a maximum of 30 years, with the possibility of extension by up to 20 years and renewal by up to another 30 years,²⁹ depending on the government's needs and approval. This right can be transferred and used as collateral for debt, with dependent rights, providing HGB holders with flexibility to manage and use land for business and development purposes. This provision aims to promote investment and development while ensuring land management is carried out in accordance with applicable laws and regulations.

From a legal certainty perspective, the coexistence of the UUPA and the Job Creation Law raises concerns about normative disharmony. The UUPA emphasises that land ownership rights may be held only by Indonesian citizens, as a manifestation of the principle of nationality. In contrast, the Job Creation Law and the implementing regulations provide wider access for foreign nationals to own landed houses and flats in SEZs. Even though the rights are not formally qualified as land titles, the expansion of property rights by foreign nationals raises questions about the consistency of Indonesia's agrarian law system. Therefore, regulatory harmonisation is needed to ensure legal certainty for investors while maintaining the basic principles.

Ownership of Flats by Foreign Nationals

Understanding the relationship between flats and HGB is important.³⁰ Flats are multi-story buildings built in environments divided into functionally structured parts in the horizontal and vertical directions, and are units owned and used separately for residential purposes, equipped with shared parts, common

²⁹ Jane S. Hankins and others, 'Long-Term Hydroxyurea Therapy for Infants with Sickle Cell Anemia: The HUSOFT Extension Study', *Blood*, 106.7 (2005), 2269–75 <<https://doi.org/10.1182/blood-2004-12-4973>>.

³⁰ Jessica Calista and Benny Djaja, 'Legal Regulations and Implications of Building Use Rights on Land Management Rights for Public Assets', *Journal of Law, Politic and Humanities*, 4.4 (2024), 505–11 <<https://doi.org/10.38035/jlph.v4i4.385>>.

objects, and common facilities.³¹ Flat buildings may be constructed on land held under Ownership, Building Use, Right of Use, or Building Use Rights established over Management Rights.³²

A Flats Unit is a unit of flats whose main purpose is to be used separately as a place of residence, with a means of connecting to public roads. In the Job Creation Law, regulations on flats for foreigners are set out in Articles 143 to 145. Article 143 states that ownership of a unit of flats is a private ownership right separate from the joint rights to common shares, property, and land. Furthermore, Article 144 paragraph (1) stipulates that property rights to flats can be given to Indonesian citizens, legal entities, foreigners who have permits in accordance with the provisions of laws and regulations, foreign legal entities, as well as representatives of countries and international institutions located in Indonesia.³³ The ownership of flats by foreigners and foreign legal entities is only allowed in SEZs, free trade zones, free ports, and industrial and economic zones. Article 145 sets out the provisions governing land on which flats can be built, with building use rights. This can be provided with the extension of the right after obtaining a certificate of functional suitability. As for flats built on management rights land, the right to use the building can be extended and renewed when the process meets the requirements of the certificate of functional fitness.³⁴ This provides legal certainty and flexibility in the management and ownership of apartment units, specifically for foreign nationals investing in the property sector. The arrangement is a significant change from the previous provision, which limited foreigners' property ownership to only the right to use certain land.³⁵ Foreigners can hold ownership rights to apartment units with location restrictions and certain requirements, with the existence of the Job Creation Law and the implementing regulations, such as Government Regulation No. 18 of 2021. This policy raises debate in contrast to the principle of nationality regulated in the Basic Agrarian Law, which places land as an asset owned by Indonesian citizens. Therefore, further study is needed on the regulation's impact and sustainability.³⁶

³¹ Article 1 point 1 of Law No. 20 of 2011

³² Article 17 of Law No. 20 of 2011

³³ Laila Rahmawati Maghfurin, Lego Karjoko, and Abdul Kadir Jaelani, 'The Validity of the Policy on the Term of Building Use Rights in the Capital City of Nusantara', 2024, pp. 708–12 <https://doi.org/10.2991/978-2-38476-315-3_97>.

³⁴ Rachael Marsh, Michael Chang, and Joanna Wood, 'The Relationship between Housing Created through Permitted Development Rights and Health: A Systematic Review', *Cities & Health*, 6.4 (2022), 833–52 <<https://doi.org/10.1080/23748834.2020.1833281>>.

³⁵ Guangyu Cheng and Yang Chen, 'Effects of Incomplete Property Rights on Informal Housing Prices: Evidence from Small Property Rights Housing of China', *Journal of Urban Planning and Development*, 149.4 (2023) <<https://doi.org/10.1061/JUPDDM.UPENG-4407>>.

³⁶ Wenli Dong and others, 'Renewal Framework for Self-Built Houses in "Village-to-Community" Areas with a Focus on Safety and Resilience', *Buildings*, 13.12 (2023), 3003 <<https://doi.org/10.3390/buildings13123003>>.

Foreign property ownership is regulated by Government Regulation Number 18 of 2021. In Article 67, paragraph (1), property rights to flats may be granted to citizens, Indonesian legal entities, foreigners with permits in accordance with applicable laws and regulations, foreign legal entities, and representatives of countries and international institutions in Indonesia.³⁷ Article 69 stipulates that foreigners who own a residence must have valid immigration documents, such as passports, visas, and permanent residence permits (KITAS/KITAP). The house or residence can be inherited by the heirs, who must also have immigration documents in accordance with applicable regulations when the foreigner dies. Article 71 paragraph (1) describes the types of houses owned by foreigners, namely, landed houses on land with the status of right of use, as well as flats, land management rights, and land owned by property. This provision provides flexibility in property ownership by foreigners while maintaining regulation and supervision of land use. In addition, the granting of building use rights for flats can be extended and renewed after meeting the requirements of the certificate of functional worthiness.

Article 71, paragraph (2) of Government Regulation Number 18 of 2021 states that flats built on land with the status of right to use are units of flats in SEZs, free trade zones and free ports, industrial estates, and other economic zones. Therefore, foreigners' ownership of flats is limited to strategic locations with special status to support investment and economic growth. Article 72 sets limits on foreigners' ownership of residential houses, including the minimum property price, the area of the land plot, the number of land plots or units of flats owned, as well as the designated use of the property.³⁸

Based on the issuance of the Job Creation Law and Government Regulation No. 28 of 2021, Foreign Citizens can own a flats with the status of Building Use Rights or Use Rights in SEZs, free trade zones and free ports, industrial estates, and other economic zones with limits determined by the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 18 of 2021. Article 185 of Government Regulation Number 18 of 2021 stipulates that foreigners with official immigration documents issued by authorised agencies may reside in two main forms. First, foreign nationals may own landed houses constructed on land with Right of Use status, whether on state-owned land or on land held under Ownership Rights or Management Rights. For land with ownership rights, ownership is established through a use

³⁷ Azhar Sidiq, "Building Use Rights Over Land Management Rights In Shopping Centers," *Communale Journal* 1, no. 1 (March 23, 2023): 23–35, <https://doi.org/10.22437/communale.v1i1.22106>.

³⁸ putu Kharisa Pramudya And I Made Pria Dharsana, "Legal Protection Of Ownership Of Flats Units Against Foreign Nationals In Indonesia," *Notariil Jurnal Kenotariatan* 8, no. 1 (June 30, 2023): 37–43, <https://doi.org/10.22225/jn.8.1.2023.37-43>.

rights agreement issued by the Land Deed Making Officer (PPAT).³⁹ Meanwhile, ownership is exercised under a land use agreement with the rights holder for land with management rights. Second, foreigners can also own flats built on land with a right to use or building use rights on state land, with management rights.⁴⁰

Restrictions on home ownership for foreigners are strictly regulated to balance opening investment opportunities with protecting national interests. For landed houses, ownership by foreigners is limited to houses in the category of luxury in accordance with the provisions of applicable laws and regulations. In addition, each foreigner or family is only allowed to own one plot of land with a maximum area of 2,000 square meters.⁴¹ These restrictions aim to prevent land speculation and keep property ownership from being excessive and detrimental to the domestic property market. For flats, ownership by foreigners is limited to commercial flats.

Foreigners can own apartment units or flats intended for residential or commercial investment, while following regulations that govern the number of units and the location of the property. These restrictions aim to regulate foreign property ownership to prevent interference with local communities' residential functions and to maintain the stability of Indonesia's property market.⁴²

Article 187, paragraph (2) of the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency (RM-ATR/BPN) Number 18 of 2021 stipulates that the purchase of houses or residential units, as well as the price of residential houses by foreigners, is determined through a Ministerial Decree. Based on the Decree of the Minister of ATR/BPN Number 1241 of 2022, a minimum price limit is set for landed houses and flats owned by foreigners,⁴³ which is adjusted to the geographical area. For landed houses, the minimum price in DKI Jakarta, Banten, West Java, Central Java, East Java, the Special Region of Yogyakarta, and Bali is IDR 5 billion. In the West Nusa Tenggara region, the minimum price is set at IDR 3 billion, while in North Sumatra, East Kalimantan,

³⁹ Nanda Riskiana and Habib Adjie, 'Authority Of Land Deed Officers On Sale And Purchase Binding Agreements For Certificate Return Process', *Devotion : Journal of Research and Community Service*, 3.3 (2022), 228–33 <<https://doi.org/10.36418/dev.v3i3.112>>.

⁴⁰ Prasetyo Adhayaksa Putra, "Arrangement Of Flats Ownership Rights By Foreign Nationals After 'The Omnibus Law,'" *Communale Journal* 1, no. 1 (March 23, 2023): 61–68, <https://doi.org/10.22437/communale.v1i1.23661>.

⁴¹ Aktieva Tri Tjitrawati and others, 'The Palu Disaster and Indonesia's Obligation to Ensure the Right of Adequate Housing and Land Rights: Mission Accomplished?', in *The Asian Yearbook of Human Rights and Humanitarian Law* (Brill | Nijhoff, 2024), pp. 311–51 <https://doi.org/10.1163/9789004706477_011>.

⁴² Sisilia Sisilia and others, 'Juridical Analysis of Government Policies on Ownership of Rights to Flats', *International Journal of Social Science and Humanity*, 1.3 (2024), 107–22 <<https://doi.org/10.62951/ijss.v1i3.62>>.

⁴³ I Made Pria Dharsana, Desak Putu Kania Pratiwi, and Rizky Mustika Rini, 'The Issue of Single Apartment for Foreigners in Indonesia', *International Journal of Law Reconstruction*, 7.1 (2023), 26 <<https://doi.org/10.26532/ijlr.v7i1.30507>>.

South Sulawesi, and the Riau Islands, the minimum price is IDR 2 billion. In other regions or provinces, the minimum price of a landed house that foreigners can own is Rp1 billion. For flats, the minimum price limit is also set by region.

In DKI Jakarta, the minimum price of a flat owned by foreigners is IDR 3 billion. In Banten, West Java, Central Java, East Java, Bali, and the Special Region of Yogyakarta, the minimum price is IDR 2 billion. In other regions or provinces, the minimum price of flats that foreigners are allowed to own is Rp1 billion. This provision governs the property market in order to prevent foreign ownership from disturbing market balance, while simultaneously preserving opportunities for quality and high-value investment.⁴⁴

This Ministerial Decree implements the Job Creation Law, which allows foreigners to own property in Indonesia while safeguarding national interests. In addition, foreigners who want to own property must have valid immigration documents such as passports, visas, and permanent residence permits (KITAS/KITAP). The government aims to maintain the stability of the domestic property market while promoting foreign investment that contributes to economic growth and national development, specifically in the property and tourism sectors, with this minimum price cap.

Foreign Citizens can own property in Indonesia, with the limits regulated in the Decree of the Minister of ATR/Head of BPN Number 1241/SK-HK.02/IX/2022. Therefore, the government facilitates and expands ownership by Foreign Citizens in Indonesia to spur economic growth, because there is a breakthrough in the application of the concept and term of land rights, as well as the criteria for property owned by foreign citizens.⁴⁵

Reform of Property Ownership Regulation for Foreign Citizens

Regulatory Reform is the process of improving the regulatory system in a country or region to enhance the efficiency, effectiveness, and quality of regulations, and to ensure legal certainty, creating a more conducive environment for investment, economic growth, and sustainable development.⁴⁶ Therefore, land regulation reform is a process of changing policies and regulations governing land ownership and use to improve justice, efficiency, and sustainability in the agrarian sector. These changes include land redistribution, enhancement of

⁴⁴ Dian Rahmawati, Datuk Ary A. Samsura, and Erwin van der Krabben, 'From Policy to Practice: How Public Land Policies Shape Private-Sector Housing Development—An Indonesian Case', *Land*, 14.5 (2025), 916 <<https://doi.org/10.3390/land14050916>>.

⁴⁵ Erni Herawati, Suparjo Suparjo, and Ratih Lestarini, 'Housing Regulations for Low-Income People in Indonesia', *International Journal of Environmental, Sustainability, and Social Science*, 4.1 (2023), 240–49 <<https://doi.org/10.38142/ijesss.v4i1.499>>.

⁴⁶ Zahid Zahoor, Irfan Khan, and Fujun Hou, 'Clean Energy Investment and Financial Development as Determinants of Environment and Sustainable Economic Growth: Evidence from China', *Environmental Science and Pollution Research*, 29.11 (2022), 16006–16 <<https://doi.org/10.1007/s11356-021-16832-9>>.

rights, or management changes. Regulatory reform of property ownership by foreign nationals is a Progressive Law.⁴⁷

Based on the description above, progressive Law is interpreted as a legal approach that demands rapid changes, fundamental breakthroughs, and paradigm reversals in legal theory and practice. According to Satjipto Rahardjo, this law constitutes a series of radical and pragmatic measures aimed at achieving social welfare through necessary reforms of the legal system and regulatory framework. Therefore, the law effectively guarantees human dignity, welfare, and the well-being of society. In this perspective, law is understood as a social instrument whose existence is related to societal goals. Progressive law has a conceptual closeness to the sociological jurisprudence developed by Roscoe Pound, specifically the idea that law is a tool of social engineering.⁴⁸ The main goal of social engineering is to shape the structure of society to meet maximum needs with minimal levels of conflict and waste.⁴⁹

In the context of property ownership by foreign nationals in SEZs, Progressive Law shows that the principle of nationality can be interpreted in a contextual manner to promote community welfare. Therefore, the expansion of property ownership rights for foreign nationals can be justified provided the concept remains within constitutional limits, does not eliminate state control over land, and provides real economic benefits. In the context of regulatory reform and pro-investment policies in SEZs, the concept of progressive law is reflected in the flexibility in the regulation of land ownership and utilisation, including for foreign investors. This flexibility shows a pragmatic transformation in Indonesia's agrarian legal system, which does not adhere to the rigidity of classical norms. However, the concept is directed to answer the needs of economic development, increasing national competitiveness, and creating a conducive investment climate. The application of progressive law in the regulation of SEZs can be understood as an effort to balance legal certainty, protection of national interests, and human welfare goals as the main orientation of the law.⁵⁰

Progressive law has a number of key characteristics that fundamentally distinguish the concept from the legalistic-positivistic legal approach. First, this

⁴⁷ Josua Navirio Pardede, Wigati Taberi Asih, and Thogu Ahmad Siregar, 'Progressivism of Judges in Deciding Applications for Marriage Dispensation', *Lambung Mangkurat Law Journal*, 6.1 (2021), 41–55 <<https://doi.org/10.32801/lamlaj.v6i1.208>>.

⁴⁸ Teja Sukmana, 'Responsive Law and Progressive Law: Examining the Legal Ideas of Philip Nonet, Philip Selznick, and Sadjipto Raharjo', *Peradaban Journal of Law and Society*, 2.1 (2023), 92–105 <<https://doi.org/10.59001/pjls.v2i1.82>>.

⁴⁹ Suad Fikriawan, Syamsul Anwar, and Misnen Ardiansyah, 'The Paradigm of Progressive Judge's Decision and Its Contribution to Islamic Legal Reform in Indonesia', *Al-Manabij: Jurnal Kajian Hukum Islam*, 15.2 (2021), 249–62 <<https://doi.org/10.24090/mnh.v15i2.4730>>.

⁵⁰ Nina Klimburg-Witjes and Alexander Wentland, 'Hacking Humans? Social Engineering and the Construction of the "Deficient User" in Cybersecurity Discourses', *Science, Technology, & Human Values*, 46.6 (2021), 1316–39 <<https://doi.org/10.1177/0162243921992844>>.

law is oriented towards the substantive goal of human welfare and happiness. In this framework, the applicability of the law is not measured by compliance with normative texts and the extent to which the law can provide real benefits to the social and economic life of the community. Second, progressive law contains strong moral and humanitarian values, placing substantive justice as the primary benchmark. This approach rejects the reduction of the law to formal procedures and allows law enforcers and policymakers to consider the ethical, social, and humanitarian dimensions in legal policy.⁵¹ Third, progressive law is liberating and transformative because the concept is not limited to the application of existing positive laws, but opens up space for conceptual and structural reform in the legal system. These reforms can include creative interpretation, norm reconstruction, and regulatory reform aimed at achieving broader social goals. In this context, the law operates on a practical level and includes a theoretical dimension that allows for the evolution of societal needs. Fourth, progressive law is critical and functional in identifying and correcting structural injustices generated by rigid or irrelevant norms, and functions as a tool of social change responsive to the dynamics of the times.⁵²

In the context of the ownership and control of property by foreign nationals, progressive legal characteristics are relevant in real terms. SEZs are designed as special legal and economic spaces, with the primary goal of attracting investment, enhancing national competitiveness, and promoting economic development. Therefore, legal arrangements inherently require greater regulatory flexibility than the general agrarian law regime. Policies that grant property ownership rights to foreign nationals, subject to certain restrictions, reflect a progressive approach to striking a balance between openness to global investment and the protection of national interests. This flexibility can be understood as a form of pragmatic transformation in the Indonesian agrarian law system, which is no longer oriented to the principle of land nationality strictly, but seeks to adapt the concept contextually without eliminating the essence of state sovereignty over land. From a progressive legal perspective, the adaptation is an effort to adjust norms to ensure that agrarian law remains relevant and functional during the challenges of economic globalisation. This progressive approach also presents potential problems, including the risk of eroding the principle of state control over land and the possibility of unequal access to agrarian resources.

The application of progressive law in the regulation of SEZs requires a clear normative safeguards framework to prevent the development of regulatory flexibility into unlimited liberalisation. This law affirms the importance of the

⁵¹ Didi Jubaidi and Khoirunnisa Khoirunnisa, 'The Significance Of The Living Law Concept In The New Criminal Code: A Perspective Of Progressive Law', *SSRN Electronic Journal*, 2025 <<https://doi.org/10.2139/ssrn.5068325>>.

⁵² H Kartodiharjo and E Cahyono, 'Agrarian Reform in Indonesia: Analyze Concepts and Their Implementation from a Governance Perspective', *Jurnal Manajemen Hutan Tropika (Journal of Tropical Forest Management)*, 27.te (2021), 1–8 <<https://doi.org/10.7226/jtfm.27.te.1>>.

state's role as a controller of the direction of legal development, where regulatory reform in SEZs remains oriented towards human welfare, social justice, and long-term national interests. Therefore, progressive law serves as a theoretical legitimacy for pro-investment policies and a critical tool for evaluating the constitutional and normative limits of the flexibility of agrarian law.

Regulatory reform reflects the awareness of the importance of creating a transparent and trustworthy investment climate to increase the confidence of foreign investors while providing protection for local communities. Progressive law serves as an instrument for legal change and a tool to achieve inclusive and equitable sustainable development goals. Indonesia can optimally leverage the potential of foreign investment, strengthen the property sector, and promote equitable development across regions, particularly in SEZs, through adaptive, humanistic regulations.⁵³ Therefore, this study of the opportunities and limitations of property ownership by foreign nationals in SEZs is important from legal, economic, social, and political perspectives. A meaningful contribution has been made to understanding the implications of the policies and providing constructive recommendations for policymakers, investors, and the wider community. The application of progressive law is an important foundation to support sustainable and equitable national development, while maintaining harmony between national and global interests.

In the UUPA, nationality is a principle of agrarian law and part of Indonesia's constitutional identity. Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia emphasises that the earth, water, and natural resources are controlled by the state and used for the prosperity of the people. In this context, restrictions on land ownership by foreign nationals are seen as an instrument to maintain state sovereignty and protect public access to agrarian resources. The expansion of property ownership rights for foreign nationals should be understood as a limited exception and interpreted as a removal of the nationality principle. This approach allows the state to attract foreign investment without sacrificing the constitutional identity, serving as the foundation of Indonesia's agrarian law.

Conclusion

In conclusion, the latest regulations in Indonesia have created broader opportunities for foreign citizens to own property, particularly in SEZs. The government through various regulations, such as the Job Creation Law, Government Regulation Number 18 of 2021, and the Decree of the Minister of ATR/Head of BPN Number 1241/SK-HK.02/IX/2022, provides convenience and legal certainty for foreigners to own landed houses or flats with the status of

⁵³ Lucy Erdika and others, 'Integration of Customary Law in Agrarian Law Development in the Industrial Revolution 4.0 Era', *Peradaban Journal of Law and Society*, 3.1 (2024), 88–103 <<https://doi.org/10.59001/pjls.v3i1.131>>.

right to use or use the building, as well as set minimum price limits, land area, and the number of units owned. This regulatory reform is a form of progressive legal implementation aimed at creating a conducive investment climate, increasing competitiveness, and promoting national economic growth through foreign investment in the property sector.

Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia places land as a strategic resource controlled by the state and used for the prosperity of the citizens. In this perspective, the restriction of land ownership by foreign nationals is an administrative policy and a manifestation of the constitutional mandate. Therefore, any policy that expands foreign nationals' access to property must be tested on the principles of public utility, social justice, and the protection of state sovereignty over agrarian resources. This opportunity is still balanced by several limitations and strict supervision, such as restrictions on ownership location, the requirement for valid immigration documents, and the prohibition on foreigners owning land titles. Foreign ownership of property is also allowed only for luxury houses or commercial flats, with a predetermined minimum price. This prevents the disruption of the domestic property market and protects the interests of the local community. In addition, regulations govern the mechanism for the inheritance and transfer of rights, providing legal certainty for foreigners and their heirs.

The policy of property ownership by foreign nationals reflects the government's efforts to balance the need for foreign investment with the protection of national interests and the principle of nationality. This regulatory reform is expected to provide significant economic benefits, strengthen Indonesia's position in the global market, and maintain the sovereignty and sustainability of national land management. The importance of continuous monitoring and evaluation of policy implementation is emphasised to ensure the optimal achievement of sustainable development objectives and social justice. In addition, the expansion of property ownership rights for foreign nationals in SEZs does not completely alter the nationality principle regulated by the UUPA. The policy can be understood as a limited constitutional exception to support economic development and investment goals. The existence of two different legal regimes has the potential to cause legal uncertainty when the concept is not accompanied by clear regulatory harmonisation. Therefore, strengthening legal certainty and protecting Indonesia's constitutional identity must be the main consideration in the development of property ownership policies by foreign citizens in the future.

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