

A COMPARATIVE STUDY OF THE LEGAL REGULATION OF LIMITED LAND OWNERSHIP RIGHTS BY FOREIGN NATIONALS UNDER INDONESIAN AND THAI LAW

Syahdan Alwi ^{a*)}, Mhd Teguh Syuhada Lubis ^{a)}

^{a)} Universitas Muhammadiyah Sumatera Utara, Medan Indonesia

^{*)}Corresponding Author: syahdanalwi123@gmail.com

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Abstract. The regulation of land ownership rights by foreign nationals is a strategic issue in agrarian law because it directly relates to state sovereignty and foreign investment interests. This study aims to analyze legal regulations regarding limited land ownership rights for foreign nationals under agrarian law in Indonesia and Thailand, and to examine similarities and differences in these regulations in both legal systems. This research uses a normative legal research method with statutory and comparative legal approaches. The data consists of secondary data, including primary, secondary, and tertiary legal materials, collected through literature studies and analyzed qualitatively in a normative manner. The results show that Indonesia explicitly prohibits foreign nationals from owning freehold land based on the nationality principle in the Basic Agrarian Law, but provides limited access through use rights and lease rights regulated in the latest implementing regulations. Thailand also prohibits land ownership by foreigners under the Thailand Land Code but opens limited exceptions through investment mechanisms and long-term leases with strict administrative oversight. The similarity in both countries lies in the goal of protecting national land sovereignty, whereas the difference lies in the legal approach: Indonesia emphasizes restrictions based on the type of land rights, while Thailand focuses on restrictions based on legal subjects and investment policy. The study concludes that limited land ownership for foreign nationals in both Indonesia and Thailand represents a balance between national interests and economic development needs, but requires strengthening of oversight and policy consistency to ensure legal certainty.

Keywords: land ownership; foreign nationals; comparative agrarian law.

I. INTRODUCTION

Land is a strategic resource with fundamental value in state life because it is directly related to economic, social, cultural, and national sovereignty aspects. From a public law perspective, regulations concerning land control and ownership function not only as instruments of legal certainty but also as means for the state to regulate the utilization of agrarian resources in line with national interests. Therefore, land law in many countries generally places restrictions on foreign land ownership as part of policies to protect state sovereignty (Sitorus, 2021).

The development of globalization and the significant increase in foreign investment flows have directly impacted national land law systems. States face a dilemma between the need for foreign investment as a driver of economic growth and the constitutional obligation to ensure that land control does not freely fall into foreign hands. This condition requires legal regulations capable of balancing economic interests with the principle of state sovereignty over land (Sutaryono, 2020).

In Indonesia, regulations concerning land ownership by Foreign Nationals (Warga Negara Asing/WNA) are firmly based on the nationality principle as stipulated in Law Number 5 of 1960 concerning Basic Agrarian Principles

(Basic Agrarian Law). This principle affirms that ownership rights over land (hak milik) may only be held by Indonesian citizens, while foreign nationals are only permitted to obtain limited land rights, such as rights of use (hak pakai) or lease rights (hak sewa). This regulation reflects the orientation of Indonesian agrarian law, which positions land as part of national wealth that must be protected from foreign control (Santoso, 2022).

Recent studies indicate that these normative regulations have not been fully effective in practice. Several studies reveal the continued prevalence of nominee agreements used as legal loopholes by foreign nationals to indirectly control land. Such practices raise serious issues regarding legal certainty, protection of national interests, and the potential for future agrarian conflicts (Rachman & Wibowo, 2021). This situation demonstrates a gap between *das sollen* and *das sein* in regulating land rights for foreign nationals in Indonesia. (Koto et al., 2023)

Thailand, as a country with strong appeal to foreign investors particularly in the property and tourism sectors also implements policies restricting land ownership by foreign nationals. The Thailand Land Code B.E. 2497 (1954) fundamentally prohibits foreigners from owning land but provides limited exceptions through special licensing mechanisms, investment requirements of a certain value, and

land ownership within specific area limits determined by the state. This approach shows that Thailand applies relatively strict policies while remaining adaptive to foreign investment needs (Kanchanapoom, 2020).

Recent research on Thai land law indicates that restrictions on foreign land ownership are part of national policy aimed at maintaining economic stability and preventing land speculation by foreigners. Although limited ownership opportunities are provided, the state retains full control through strict administrative supervision mechanisms. This model is considered capable of providing legal certainty while safeguarding Thailand's national interests (Chaiyasit, 2022).

Several comparative studies published after 2020 reveal that although Indonesia and Thailand both restrict foreign land ownership, significant differences exist in the types of rights granted, acquisition mechanisms, and policy flexibility. Indonesia tends to impose restrictions based on types of land rights, whereas Thailand emphasizes restrictions based on legal subjects and investment value. However, these studies are generally partial and have not comprehensively examined the legal construction of limited land ownership within a normative comparative framework (Putri & Ananda, 2023).

Based on the foregoing, it can be concluded that the regulation of limited land ownership rights for foreign nationals constitutes a complex and strategic legal issue in both Indonesia and Thailand. The differing legal approaches adopted by the two countries warrant further examination through comparative legal research. Accordingly, this study focuses on the legal regulation of limited land ownership rights for foreign nationals under agrarian law in Indonesia and Thailand, as well as analyzing the similarities and differences in such regulations within the legal systems of both countries.

II. RESEACH METHODS

This study is a normative legal research aimed at examining and analyzing legal regulations concerning limited land ownership rights for foreign nationals within the legal systems of Indonesia and Thailand. The approaches employed include a statutory approach and a comparative law approach, by examining Law Number 5 of 1960 concerning Basic Agrarian Principles along with its implementing regulations in Indonesia, as well as the Thailand Land Code B.E. 2497 (1954) as the fundamental land law in Thailand. (Abduh & Riza, 2018) The analysis is conducted prescriptively and systematically to understand the construction of norms, legal principles, and limitations on land ownership by foreign nationals in both legal systems, thereby identifying the characteristics and policy orientations of land law applied by each country (Santoso, 2022; Kanchanapoom, 2020).

The data used in this research consists of secondary data comprising primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations governing land ownership by foreign nationals in Indonesia and Thailand.

Secondary legal materials consist of legal textbooks, scholarly journal articles, previous research findings, and academic publications relevant to agrarian law and comparative law, while tertiary legal materials include legal dictionaries and legal encyclopedias. Data collection techniques involve literature study by reviewing and inventorying relevant legal materials, (Atika, 2021) which are then analyzed using qualitative normative analysis methods to draw conclusions regarding the similarities and differences in the regulation of limited land ownership rights for foreign nationals in the Indonesian and Thai legal systems (Sutaryono, 2020; Putri & Ananda, 2023).

III. RESULTS AND DISCUSSION

Legal Regulation of Limited Land Ownership Rights for Foreign Nationals under Indonesian and Thai Agrarian Law.

The regulation of land ownership rights for foreign nationals under Indonesian agrarian law is fundamentally based on the principle of nationality, as explicitly stipulated in Article 21 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles. This provision affirms that ownership rights over land may only be held by Indonesian citizens; therefore, foreign nationals are normatively prohibited from becoming subjects of ownership rights. This prohibition is intended to safeguard state sovereignty over land as a strategic national resource (Hidayat, 2020).

Further provisions regarding restrictions on the subjects of ownership rights are reinforced in Article 21 paragraph (3) of the Basic Agrarian Law, which states that foreign nationals who acquire ownership rights through inheritance without a will or marital property mixing are obliged to relinquish such rights within a specified period. This norm demonstrates that Indonesian agrarian law does not provide room for permanent land ownership by foreign nationals, even under incidental transfers of rights (Firmansyah, 2021).

The right of use (*hak pakai*) constitutes a form of land rights that can explicitly be granted to foreign nationals within the Indonesian legal system. The regulation of the right of use is governed by Article 42 of the Basic Agrarian Law, which provides that foreign nationals domiciled in Indonesia may hold rights of use over land. (Lubis, 2021) This provision is further strengthened by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, which stipulates that the maximum duration of the right of use is 30 years and may be extended and renewed in accordance with prevailing laws and regulations (Nasution, 2022).

Technical regulations concerning residential ownership by foreign nationals in Indonesia are further governed by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 18 of 2021 concerning Procedures for the Determination of Management Rights and Land Rights. This regulation provides legal certainty for foreign nationals to own

residential houses or apartment units under the right of use status, provided they meet residency permit requirements and minimum property value thresholds set by the government. This policy reflects the state's selective approach in granting limited ownership access to foreign nationals (Sembiring, 2023).

Lease rights over land are also recognized as a form of land control for foreign nationals, as stipulated in Article 44 of the Basic Agrarian Law. This right is civil in nature and does not establish strong proprietary relations, thereby preventing long-term control that could threaten the national land ownership structure. The recognition of lease rights demonstrates that Indonesian agrarian law provides alternative mechanisms for land utilization by foreign nationals without transferring ownership rights (Kurniawan, 2024).

Land law regulations in Thailand generally prohibit foreign nationals from owning land, as stipulated in Section 86 of the Thailand Land Code B.E. 2497 (1954). This provision states that foreigners are not permitted to own land unless otherwise provided by law. This prohibition represents Thailand's national policy to maintain land ownership stability and prevent land speculation by foreign entities (Phanith, 2020).

Exceptions to this prohibition are regulated under Section 96 bis of the Thailand Land Code, which allows foreign nationals to own land for residential purposes if they make investments of a specified value and obtain approval from the Minister of Interior. This policy has been reaffirmed through post-2021 Thai investment policies that provide limited land ownership opportunities for strategic foreign investors, albeit subject to strict administrative requirements and explicitly limited land areas (Sirisomboon, 2022).

Foreign nationals in Thailand may also control land through long-term lease schemes as regulated under the Thai Civil and Commercial Code. These lease arrangements may be granted for up to 30 years and extended in accordance with legal provisions, without conferring ownership status. Long-term leasing mechanisms are regarded as safe legal instruments for attracting foreign investment without compromising national land sovereignty (Kiatkawsin, 2023).

A comparison of regulations in Indonesia and Thailand reveals that Indonesia provides limited ownership access through classifications of land rights, whereas Thailand emphasizes restrictions based on legal subjects with investment-based policy exceptions. These differing approaches are influenced by each country's legal system and agrarian policy orientation in responding to economic globalization (Yuliana, 2024).

The regulation of limited land ownership rights for foreign nationals in both Indonesia and Thailand fundamentally shares the same objective: preserving national land sovereignty while opening limited space for economic interests. The legal constructions adopted by both countries demonstrate that restricting land ownership by foreign nationals serves as an essential instrument in modern agrarian law to balance national interests with the demands of foreign investment (Maulana, 2023).

Similarities and Differences in the Regulation of Limited Land Ownership Rights for Foreign Nationals in the Legal Systems of Indonesia and Thailand.

The primary similarity in the regulation of land ownership rights for foreign nationals in Indonesia and Thailand lies in the principle of restricting land ownership as a means of protecting state sovereignty. Both countries firmly prohibit foreign nationals from freely owning land under full ownership rights. This policy is grounded in the view that land constitutes a strategic resource that must remain under state control and national ownership to safeguard long-term national interests (Mahendra, 2021).

Another similarity is reflected in the provision of alternative mechanisms for limited land control by foreign nationals through specific legal arrangements. Indonesia grants access through rights of use and lease rights as regulated under the Basic Agrarian Law and its implementing regulations. Thailand provides long-term lease schemes and limited exceptions through certain investment policies. This pattern indicates that both countries adopt a selective approach in opening land access for foreign nationals to support economic interests (Anindita, 2022).

A further similarity is evident in the dominant role of the state in supervising and controlling land ownership by foreign nationals. Both Indonesia and Thailand implement strict administrative mechanisms through land authorities and relevant ministries. This oversight aims to prevent misuse of land rights that could potentially harm national interests and local communities (Pramudya, 2023).

A fundamental difference between Indonesia and Thailand lies in the normative approach used to restrict land ownership by foreign nationals. Indonesia applies restrictions based on the classification of land rights, clearly distinguishing between ownership rights, rights of use, and lease rights. Thailand, on the other hand, emphasizes restrictions based on legal subject status, with a general prohibition on foreign ownership and limited exceptions grounded in administrative policy considerations (Sukardi, 2021).

Another difference can be observed in the legal basis governing land control by foreign nationals. Indonesia regulates the matter comprehensively through hierarchical legislation, ranging from statutes to ministerial regulations. Thailand relies on a combination of the Land Code, the Civil and Commercial Code, and investment policies that may change according to national economic priorities. As a result, Thailand's regulatory framework exhibits a higher degree of flexibility compared to Indonesia (Chawalit, 2022).

A significant difference is also found in the mechanism of limited ownership through investment. Thailand allows foreign nationals to own land upon meeting specific investment thresholds and obtaining approval from the central government. Indonesia does not recognize investment-based land ownership mechanisms; instead, it grants only rights of use without altering the substantive ownership status of land (Wijanarko, 2023).

Another distinction relates to legal certainty for foreign nationals. Indonesia offers certainty through clearly classified land rights registered within the national land registration system. Thailand provides certainty through

administrative approvals and strict supervision, although such certainty depends on dynamic government policies. This difference reflects the distinct characteristics of each country's legal system (Putthipong, 2024).

The implications of these differences indicate that Indonesia places greater emphasis on agrarian law stability grounded in written legal norms, whereas Thailand prioritizes economic policy flexibility while maintaining strong state control. Both approaches present advantages and limitations in ensuring legal certainty while simultaneously attracting foreign investment (Nugraha, 2022).

These similarities and differences underscore that although Indonesia and Thailand share the same objective of safeguarding national land sovereignty, the legal instruments employed differ according to the needs and characteristics of each legal system. This comparative study illustrates that there is no single model for regulating land ownership by foreign nationals; rather, regulatory variations are tailored to national interests (Kusnadi, 2024).

This comparative analysis demonstrates that the regulation of limited land ownership rights for foreign nationals constitutes a strategic issue requiring a balance between state sovereignty and economic development needs. Indonesia and Thailand both strive to maintain this balance through different legal approaches while remaining oriented toward similar overarching objectives (Rahmatullah, 2023).

IV. CONCLUSIONS

The regulation of limited land ownership rights for foreign nationals in Indonesia and Thailand reflects a shared objective of safeguarding state sovereignty over land as a strategic national resource. Indonesia, through the Basic Agrarian Law and its implementing regulations, strictly prohibits foreign ownership rights while providing limited access through clearly regulated rights of use and lease arrangements under strong administrative control. Thailand similarly restricts foreign land ownership under the Land Code but allows limited exceptions through investment-based policies and long-term leases. Comparatively, Indonesia demonstrates a stronger normative framework by emphasizing legal certainty through a clear classification of land rights and a structured regulatory hierarchy. This approach ensures long-term stability and consistent enforcement. Thailand, by contrast, prioritizes policy flexibility by granting discretionary authority to the state, enabling adaptive responses to economic needs but potentially reducing predictability. (Rahimah & Koto, 2022). Overall, Indonesia's system offers a more robust legal foundation for protecting national land interests, while Thailand's model provides useful insights into controlled policy adaptability. Strengthening supervision and preventing nominee practices remain essential for Indonesia to maintain legal certainty while accommodating limited foreign investment needs. (Lubis, 2017)

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