

FOREIGN NATIONALS' PROPERTY OWNERSHIP OF CONDOMINIUM UNITS POST-ENACTMENT OF THE JOB CREATION LAW: A COMPARATIVE STUDY OF INDONESIA, THAILAND, AND TURKEY

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doi: <https://doi.org/10.24843/KS.2025.v13.i07.p10>

ABSTRAK

Penelitian ini bertujuan untuk menganalisis pengaturan kepemilikan properti oleh Warga Negara Asing terkait satuan rumah susun di Indonesia, Thailand, dan Turki serta menelaah syarat dan batasan kepemilikan satuan rumah susun bagi Warga Negara Asing menurut Peraturan Perundang-undangan yang berlaku di negara-negara tersebut. Penelitian ini menggunakan jenis penelitian yuridis normatif dengan pendekatan perundang-undangan (*statute approach*) dan pendekatan perbandingan (*comparative approach*). Hasil penelitian menunjukkan bahwa perubahan dalam UU Nomor 6 Tahun 2023 tentang Penetapan PP Cipta Kerja menjadi Undang-Undang, lebih kepada penyesuaian kebutuhan investasi global tanpa mengabaikan prinsip dasar nasionalitas. Hal ini dikarenakan rumah susun di Indonesia menganut asas pemisahan horizontal. Sehingga, seseorang bisa memiliki unit satuan rumah susun, tetapi tidak secara langsung memiliki tanahnya. Negara seperti Indonesia, Thailand, dan Turki menetapkan mekanisme hukum yang berbeda dalam mengakomodasi kepemilikan apartemen oleh WNA, seperti menetapkan harga yang lebih tinggi dibanding warga lokal, penggunaan mata uang asing dalam pembelian unit apartemen, pembatasan dalam wilayah ekonomi tertentu, mengadakan prinsip resiprositas dengan negara tujuan, serta beberapa ketentuan lainnya yang diatur dalam peraturan masing-masing negara, namun tetap dalam koridor pembatasan tertentu yang bertujuan untuk menjaga kepentingan nasional, stabilitas sosial, dan kedaulatan agraria.

Kata Kunci: Rumah susun, Warga Negara Asing, Asas Nasionalitas, UU Cipta Kerja

ABSTRACT

This study aims to analyze the regulations concerning property ownership by Foreign Nationals with respect to condominium units in Indonesia, Thailand, and Turkey, as well as to examine the conditions and restrictions on condominium unit ownership by Foreign Nationals in accordance with the prevailing laws and regulations in these countries. This research employs a normative juridical methodology with a statutory approach and a comparative approach. The findings indicate that the amendments to Law Number 6 of 2023 regarding the Ratification of the Job Creation Government Regulation into Law primarily reflect adjustments to global investment needs without disregarding the fundamental principle of nationality. This is due to the fact that condominiums in Indonesia adhere to the principle of horizontal separation, whereby an individual may own a condominium unit but does not directly own the land beneath it. Countries such as Indonesia, Thailand, and Turkey establish different legal mechanisms to accommodate foreign ownership of apartments, including imposing higher prices compared to local citizens, permitting the use of foreign currency in the purchase of apartment units, restricting ownership within certain economic zones, applying principles of reciprocity with the foreigner's country of origin, as well as other provisions regulated under each country's respective laws. Nonetheless, these regulations remain within certain limitations aimed at safeguarding national interests, social stability, and agrarian sovereignty.

Key Words: Condominium, Foreign National, Principle of Nationality, Job Creation Law.

I. INTRODUCTION

1.1 Research Background

Land constitutes one of the most fundamental elements for human sustenance, granted as a divine endowment by the Almighty. As an integral component of the earth, land is regulated under Article 4 of Law No. 5 of 1960 concerning the Basic Agrarian Principles (UU 5/1960), which establishes state sovereignty over land through a system of defined surface rights. The constitutional foundation for land governance in Indonesia is enshrined in Article 33(3) of the 1945 Constitution (UDN NRI 1945): "*The earth, water, and natural resources contained therein shall be under the authority of the state and utilized for the greatest prosperity of the people.*" This provision interprets state control as encompassing all terrestrial and subsurface resources, empowering the state to ensure equitable distribution of natural wealth for the Indonesian populace.¹ Furthermore, Article 28H(1) of the UDN NRI 1945 obligates the state to guarantee citizens' welfare, including the provision of adequate housing as a fundamental right essential for a dignified and prosperous life.

Land rights confer legal authority upon holders to utilize and derive benefits from the subject land.² Under the nationality principle articulated in Article 9(1) of the UU 5/1960, only Indonesian citizens (WNI) may hold absolute rights over land, water, and airspace. Consequently, foreign nationals (WNA) residing in Indonesia may only acquire Hak Pakai (Right of Use) over land. Right of Use permits the use and/or exploitation of land directly controlled by the state, private ownership land, or management land, subject to terms stipulated by competent authorities or contractual agreements (excluding lease or land cultivation agreements).³ This right is granted for a maximum initial term of 30 years, extendable by 20 years, and renewable for an additional 30 years.⁴

However, this regulatory framework underwent significant amendments following the enactment of Law Number 11 of 2020 concerning Job Creation, which has subsequently been revised and codified as Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (hereinafter referred to as the Job Creation Law). Notably, Article 144 (1) (c) Job Creation Law (UU 6/2023) expressly provides that condominium ownership rights may be granted to foreign nationals who possess proper authorization in accordance with prevailing statutory regulations.⁵ This law explicitly authorizes foreign nationals residing in Indonesia to acquire property in the form of apartment/condominium units constructed on land with Right to Build (HGB), Management Rights, or even Ownership Rights, a significant regulatory expansion that includes land tenure types previously

¹ Atik Winanti, Taupiq Qurrahman, and Rosalia Dika Agustanti, "PENINGKATAN STATUS HAK GUNA BANGUNAN MENJADI HAK MILIK," *Jurnal Bakti Masyarakat Indonesia* 3, no. 2 (2020), <https://doi.org/10.24912/jbmi.v3i2.9464>.

² Urip Santoso, *Perolehan Hak Atas Tanah* (Jakarta: Kencana Prenada Media, 2015).

³ Indah Sari, "HAK-HAK ATAS TANAH DALAM SISTEM HUKUM PERTANAHAN DI INDONESIA MENURUT UNDANG-UNDANG POKOK AGRARIA (UUPA)," *JURNAL MITRA MANAJEMEN* 9, no. 1 (2017), <https://doi.org/10.35968/jmm.v9i1.492>.

⁴ Kompas Cyber Media, "Apa Itu Sertifikat Hak Pakai? Simak Pengertian Hingga Jangka Waktunya Halaman all," *KOMPAS.com*, July 2, 2022, <https://www.kompas.com/properti/read/2022/07/03/063000721/apa-itu-sertifikat-hak-pakai-simak-pengertian-hingga-jangka-waktunya>.

⁵ Renata Christha Auli S.H, "Ketentuan Hak Milik Atas Satuan Rumah Susun untuk WNA | Klinik Hukumonline," May 29, 2023, <https://www.hukumonline.com/klinik/a/ketentuan-hak-milik-atas-satuan-rumah-susun-untuk-wna-lt51963f5f6690f/>.

excluded from foreign ownership.⁶ The Job Creation Law expressly authorizes and permits foreign nationals residing in Indonesia to acquire property in the form of apartment/condominium units constructed on land subject to Right to Build (HGB), a significant departure from prior legal restrictions that explicitly prohibited such arrangements.⁷ Article 35(1) and (2) of the Basic Agrarian Law (UU 5/1960) stipulate that the Right to Build (HGB) is granted for a maximum initial period of 30 years, which may be extended for up to 20 years, and subsequently renewed for a further maximum period of 30 years. Furthermore, the HGB is transferable to other parties and may be encumbered with a Hak Tanggungan (Mortgage Right) to secure debt obligations.⁸

The liberalization of property ownership for foreign nationals presents a normative dilemma between economic imperatives and the preservation of national land sovereignty. Comparatively, in civil law jurisdictions such as Thailand and Turkey, foreign nationals are similarly afforded opportunities to hold land rights, albeit subject to distinct statutory limitations. This regulatory divergence necessitates a comprehensive comparative legal analysis of respective national frameworks to properly evaluate Indonesia's position in harmonizing legal certainty with foreign investment attractiveness in the property sector.

Existing scholarship relevant to this study includes Rokilah and Mia Mukaromah's (2018) examination of land rights classification and foreign national property ownership under the framework of the Basic Agrarian Law. While this study provides foundational analysis of land rights within the UUPA paradigm, its scope does not extend to post-enactment amendments introduced by the Job Creation Law. Subsequent research by Luna Diana Puteri and Taupiqqurrahman (2022) offers comparative analysis of condominium ownership rights for foreign nationals following the Job Creation Law's implementation. However, their work fails to comprehensively address: (1) the procedural requirements for ownership acquisition, and (2) the legal certainty mechanisms available to foreign nationals under the new regulatory regime. Notably, Noviana et al. (2022) present a critical jurisprudence analysis, arguing that the Job Creation Law's provisions on foreign land ownership contravene the nationality principle through application of the *lex specialis derogat legi generalis* doctrine. This research nevertheless exhibits two significant lacunae: (1) it omits examination of the *lex posterior derogat legi priori* principle as a complementary analytical framework, and (2) it fails to articulate an optimal regulatory model for foreign-owned condominium units in Indonesia.

Building upon the aforementioned research gaps, this study aims to complement prior scholarship by examining regulatory changes in foreign national property ownership post-enactment of Indonesia's Job Creation Law, while conducting a comparative analysis of the legal requirements and restrictions governing condominium ownership for foreign national under the statutory frameworks of Thailand and Turkey. Specifically, this research seeks to address how Indonesia, Thailand, and Turkey regulate

⁶ Luna Diana Puteri and Taupiqqurrahman Taupiqqurrahman, "KEPEMILIKAN ATAS APARTEMEN OLEH WARGA NEGARA ASING PASCA UNDANG-UNDANG NOMOR 11 TAHUN 2020 TENTANG CIPTA KERJA," *Jurnal Hukum Dan Kenotariatan* 6, no. 1 (December 12, 2021): 140–53, <https://doi.org/10.33474/hukeno.v6i1.14321>.

⁷ Rokilah and Mia Mukaromah, "Pemilikan Hak Atas Tanah Bagi Warga Negara Asing.," *Ajudikasi: Jurnal Ilmu Hukum* 2, no. 2 (2018).

⁸ Nafiatul Munawaroh M.H S. H., "Perbedaan Hak Guna Bangunan dan Hak Pakai | Klinik Hukumonline," December 22, 2023, <https://www.hukumonline.com/klinik/a/perbedaan-hak-guna-bangunan-dan-hak-pakai-lt657c001024ac9/>.

foreign ownership of condominium units within their respective property law regimes, and what legal conditions and limitations apply to such ownership under each jurisdiction's prevailing regulations. By employing doctrinal analysis of statutory instruments, including Indonesia's Basic Agrarian Law and Job Creation Law, Thailand's Condominium Act B.E. 2522, and Turkey's Condominium Law No. 634. This study contributes to post-reform Indonesian land law discourse while offering comparative insights into balancing foreign investment incentives with national sovereignty in civil law jurisdictions.

1.2 Law Policy Issues

Focusing on the background of the issues previously outlined by the author, the principal problems addressed in this study are formulated as follows:

1. How has property ownership by Foreign Nationals in Indonesia changed following the enactment of the Job Creation Law?
2. What are the conditions and restrictions on condominium ownership by Foreign Nationals from the perspective of positive law in Indonesia, Thailand, and Turkey?

1.3 Research Targets

This study aims to further analyze the changes in property ownership by Foreign Nationals in Indonesia following the enactment of the Job Creation Law, by examining the legal principles employed as an analytical framework to assess whether the Job Creation Law contravenes the principle of nationality as stipulated in the Basic Agrarian Law. Furthermore, this study also examines government policies concerning the conditions and restrictions on condominium ownership by Foreign Nationals from the perspective of positive law in Indonesia, Thailand, and Turkey.

2. RESEARCH METHOD

This study adopts a normative-juridical legal research approach, which entails a systematic examination of statutory regulations and prevailing legal provisions as positive law in Indonesia.⁹ This study adopts a dual methodological framework, combining a legislative approach through systematic analysis of statutory regulations governing foreign land ownership rights under Indonesia's Basic Agrarian Law (1960) and Job Creation Law (2023), Thailand's Condominium Act B.E. 2522 (1979), and Turkey's Condominium Law No. 634 (2011), with a comparative legal approach to identify regulatory convergences and divergences across these civil law jurisdictions. Secondary data was collected via doctrinal research, encompassing primary legal sources, scholarly commentaries, and policy documents, to establish an analytical foundation for examining foreign ownership provisions within each nation's positive law system.¹⁰ The secondary research data were analyzed using a systematic qualitative approach to derive substantiated conclusions regarding the legal issues under examination.¹¹ The research data are presented through clear, effective, coherent, systematic, and logically structured exposition to facilitate comprehensive analysis and

⁹ Jonaedi Efendi and Johny Ibrahim, *Penelitian Hukum Normatif Dan Empiris* (Jakarta: Kencana, 2016).

¹⁰ Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2008).

¹¹ Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta: PT. Rineka Cipta, 2004).

scholarly discussion of the addressed legal issues.¹²

3. RESULT AND DISCUSSION

3.1 The Reform of Foreign National Property Ownership Provisions in Indonesia Post-Enactment of the Job Creation Law

Land ownership constitutes an inalienable component of fundamental human rights and plays a pivotal role in fulfilling basic individual needs. Article 1(3) of the United Nations Charter explicitly stipulates that foreign nationals are entitled to equal rights and protections as citizens of their host country, without diminution of internationally recognized human rights under established international law. Consequently, governments bear an obligation to accommodate investor needs by ensuring land availability for both residential and commercial purposes, while balancing this imperative with state sovereignty and public welfare considerations.

The Basic Agrarian Law establishes a regulatory framework permitting foreign nationals residing in Indonesia to acquire land through Right of Use and Hak Sewa (Right of Lease). Article 42 UUPA explicitly restricts foreign individuals and foreign legal entities with Indonesian representation to Right of Use, a derivative right aligned with the Principle of Nationality under Article 9 (1) Basic Agrarian Law, which reserves full land ownership exclusively for Indonesian citizens. Complementarily, Article 45 Basic Agrarian Law authorizes foreign nationals to hold Right of Lease, recognizing leasehold rights as a permissible tenure for non-citizens.¹³

Article 4 (b) of Government Regulation No. 103 of 2015 on Ownership of Residential Housing by Foreign Nationals Residing in Indonesia (PP No. 103/2015) permits foreign nationals to own condominium units constructed on land with Right of Use. Condominiums are defined as multi-story buildings, constructed either vertically or horizontally, comprising individual units with shared common areas, joint facilities, and communal land. Under Article 1(3) of Law No. 20 of 2011 on Condominiums, a condominium unit constitutes a separately habitable space with direct access to public thoroughfares. The term encompasses multiple legal and architectural concepts:¹⁴

- a. Condominium (ownership model)
- b. Apartment/Flat (physical structure)
- c. Strata title (freehold ownership right over individual units)

However, the enactment of the Job Creation Law in 2020 introduced significant regulatory reforms in land and housing sectors, including revisions to foreign ownership provisions for condominium units in Indonesia. The government justified these amendments as necessary measures to enhance foreign investment attractiveness and

¹² H Ishaq, *Metode Penelitian Hukum Dan Penulisan Skripsi, Tesis Serta Disertasi* (Bandung: Alfabeta, 2017).

¹³ Muhammad Faniawan Asriansyah, "Kepemilikan Tanah Bagi Warga Negara Asing Atas Tanah Di Indonesia," 2023, <https://www.djkn.kemenkeu.go.id/artikel/baca/15842/Kepemilikan-Tanah-Bagi-Warga-Negara-Asing-Atas-Tanah-di-Indonesia.html>.

¹⁴ Ina Budhiarti, "PERLINDUNGAN HUKUM BAGI PENGHUNI SATUAN RUMAH SUSUN DI BIDANG PENGELOLAAN RUMAH SUSUN DI BANDUNG DIHUBUNGKAN DENGAN UNDANG-UNDANG NOMOR 20 TAHUN 2011 TENTANG RUMAH SUSUN," *Jurnal Wawasan Yuridika* 34, no. 1 (2016), <https://ejournal.sthb.ac.id/index.php/jwy/article/view/110>.

streamline licensing procedures within the country.¹⁵ Articles 144 and 145 of the Job Creation Law expand provisions allowing foreign nationals to own condominium units on land with Right to Build status, as further clarified in Article 71 of Government Regulation No. 18 of 2021 (PP No. 18/2021) on Land Rights Implementation Procedures. This represents a departure from the nationalist spirit of the Basic Agrarian Law, Government Regulation No. 40 of 1996, and Government Regulation No. 103 of 2015, which previously restricted foreign ownership to units built only on Right of Use land.¹⁶ The Basic Agrarian Law exclusively permits Indonesian citizens and Indonesian legal entities to hold land under Right to Build titles, as expressly stipulated in Article 30(1) and Article 36(1) of the Basic Agrarian Law.

The principle of *lex posterior derogat legi priori* serves as a foundational doctrine for reconciling the relationship between these two statutes, establishing that newer legislation supersedes prior laws when both regulate identical subject matter. Consequently, the Job Creation Law takes precedence over the Basic Agrarian Law in cases of normative conflict, ensuring legal certainty and maintaining the integrity of the national legal system. This interpretive approach does not abrogate the Basic Agrarian Law in its entirety, but rather selectively updates and elaborates specific provisions to align with contemporary developmental exigencies.

These regulatory reforms are intrinsically linked to national economic growth imperatives. The Indonesian government is actively pursuing developmental objectives and national economic advancement through investment facilitation. In alignment with the constitutional mandate for public welfare enshrined in Paragraph IV of the Preamble to the 1945 Constitution, the government has implemented legislative simplification, bureaucratic reform, and policy innovations designed to enhance investor attractiveness as strategic measures for future economic development.¹⁷ Driven by rapid globalization and international investment flows, nations are increasingly granting foreign nationals property ownership access. Failure to implement timely regulatory adaptations may result in outcomes detrimental to Indonesia's national interests. This policy shift finds partial justification in Indonesia's strategic infrastructure development requirements, including large-scale projects such as advanced technology complexes, semiconductor manufacturing facilities, high-tech transportation systems, and specialized energy installations requiring foreign technical expertise. Under such circumstances, designated foreign corporations, consultants, or professionals, including technical specialists assigned to these projects, require legally sanctioned residential accommodations throughout their assignment periods.

The regulatory flexibility introduced by the Job Creation Law thus represents a legislative response to longstanding sociopolitical tensions. By granting foreign nationals property ownership rights, specifically condominium units or apartment ownership, the law stimulates investment inflows and enhances local economic activity. Crucially, this flexibility maintains fidelity to the nationality principle, as Indonesia's

¹⁵ Galang Fauzan, "Flats for Foreigner After the Issuance of the Omnibus Law in Indonesia," *NORMA* 18, no. 1 (March 5, 2021): 9, <https://doi.org/10.30742/nlj.v18i1.1289>.

¹⁶ Noviana Eka Maharany, Adi Sulistiyono, and Albertus Sentot Sudarwanto, "Disharmoni Peraturan Perundang-Undangan Mengenai Pemilikan Satuan Rumah Susun Oleh Warga Negara Asing Di Indonesia Dikaitkan Dengan Asas Nasionalitas," *Prosiding Seminar Nasional Program Doktor Ilmu Hukum*, April 20, 2022, 135–50.

¹⁷ Dian Dewi Khasanah, "Kepemilikan Properti Bagi Warga Negara Asing Yang Berkedudukan Di Indonesia," *PROGRESIF: Jurnal Hukum* 16, no. 1 (2022): 13–37.

land law system retains the horizontal separation doctrine, which legally segregates building ownership from underlying land rights.¹⁸ According to Professor Imam Koeswahyono, an eminent agrarian law scholar, the condominium ownership system adheres to the horizontal separation doctrine. This doctrine establishes that land and buildings may be held under separate ownership, thereby legally distinguishing title to the land from title to structures erected thereon.¹⁹ Ownership rights over condominium units constitute a distinct legal category from conventional land ownership. Condominium ownership does not confer land rights per se, but rather establishes a composite interest encompassing shared ownership of common areas, co-ownership of communal land, and joint rights to common facilities.²⁰ Thus, while individuals may acquire ownership of condominium units, they obtain no direct title to the underlying land, but rather shared rights to the communal land. The amendments introduced by the Job Creation Law primarily constitute an adaptation to global investment demands, while preserving the fundamental nationality principle as the governing legal doctrine.

3.2 Legal Requirements and Limitations Concerning Apartment Unit Ownership by Aliens in the Context of Positive Law: An Examination of Indonesian, Thai, and Turkish Jurisdictions

Within civil law systems, the state must effectively fulfill its dual role as both regulator and supervisory authority in land ownership governance, given that land constitutes not only a high value economic asset but also an essential prerequisite for sustaining investment activities.²¹ In implementing the granting of land rights to foreign nationals, regulatory provisions must establish limitations on such rights to prevent excessive foreign control over Indonesian territory. Consequently, as civil law jurisdictions, Indonesia, Thailand, and Turkey have implemented specific requirements and restrictions designed to maintain equilibrium between national interests and foreign investment needs, as elaborated in the following analysis:

1. Indonesia

The statutory limitations under Indonesian law are expressly stipulated in the Elucidation of Article 69(1) of Government Regulation No. 18 of 2021 (PP No. 18/2021), which mandates that foreign nationals must possess valid immigration documents including visas, passports, or residence permits duly issued by competent authorities as a prerequisite for property ownership in Indonesia.²²

¹⁸ Felix Sofian, "Aspek Hukum Kepemilikan Satuan Rumah Susun Oleh Warga Negara Asing Dengan Hak Guna Bangunan Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 3, no. 4 (December 2, 2022): 874–903, <https://doi.org/10.30743/jhah.v3i4.6256>.

¹⁹ Sri Harini Dwiyatmi, "ASAS PEMISAHAN HORIZONTAL (HORIZONTAL SCHEIDING BEGINSEL) DAN ASAS PERLEKATAN (VERTICALE ACCESSIE) DALAM HUKUM AGRARIA NASIONAL | Refleksi Hukum: Jurnal Ilmu Hukum," 2020, <https://ejournal.uksw.edu/refleksihukum/article/view/3388>.

²⁰ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, Dan Pelaksanaannya*, Jilid 1 Hukum Tanah Nasional (Jakarta: Djambatan, 2008).

²¹ Siti Setiawaty Samosir, "Terbukanya Penanaman Modal Asing Sektor Real Estate Berdasarkan Peraturan Presiden RI No 49 Tahun 2021 Tentang Perubahan Atas Peraturan Presiden RI Nomor 10 Tahun 2021" (Innovative: Journal Of Social Science Research, 2024), <https://j-innovative.org/index.php/Innovative/article/view/8160>.

²² Galih Sabathany Hardyan and Cokorda Dalem Dahana, "Legalitas Hak Milik Atas Satuan Rumah Susun Oleh Warga Negara Asing Dalam UU Cipta Kerja," *Jurnal Kertha Negara*, 2, 10 (2022).

The provision indicates that condominium ownership for foreign nationals in Indonesia is not granted unconditionally, but rather restricted to specific individuals deemed to contribute positively to the national economy. Article 69 (2)-(3) further stipulates that such foreign-owned properties may be inherited by legal heirs, subject to identical restrictions. Additionally, Article 71 (1) (b) of Government Regulation No. 18 of 2021 specifies spatial limitations, permitting foreign-owned condominiums only on land with:

- a. Right of Use or Right to Build over State Land.
- b. Right of Use or Right to Build over Land with Management Rights (Tanah Hak Pengelolaan).
- c. Right of Use or Right to Build over privately owned land (Tanah Hak Milik).

These permitted condominiums are specifically those developed in the following designated zones:

- a. Special Economic Zones (Batam, Kendal, Sorong, Singhasari, Morotai, Gresik, Mandalika, Tanjung Lesung, Maloy Batuta Trans Kalimantan, Palu, and other designated areas as listed on kek.go.id).²³
- b. Free Trade Zones (Batam, Bintan, Sabang, Kawasan Industri Kendal, Kawasan Ekonomi Terpadu Tanjung Lesung, Free Trade Zone Jakarta, dan Karimun).²⁴
- c. Industrial Estates (Kawasan Industri Aceh Ladong, Tunas Industri Kabil, Jakarta Industrial Estate Pulogadung, Kawasan Industri Terpadu Indonesia China, and other designated zones as specified on kemenperin.go.id).²⁵
- d. Other Economic Zones as regulated under paragraph (2) of this Article.

Further restrictions are stipulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 18 of 2021 concerning Procedures for the Designation of Management Rights and Land Rights, which specify luxury class residences as defined by prevailing laws; a single plot per individual or family; and a maximum land area of 2,000 m² (two thousand square meters). Article 186 (1) of this Regulation clarifies that foreign nationals may only own commercial-class condominium units under these provisions. Additionally, Decree of the Minister of Agrarian Affairs and Spatial Planning No. 1241/SK-HK.02/IX/2022 on the Acquisition and Price of Residential Housing for Foreign Nationals (ATR/BPN Decree No. 1241/SK-HK.02/2022) establishes detailed price thresholds, as follows:²⁶

²³ “Indonesia SEZ - Kemenko Perekonomian - Kawasan Ekonomi Khusus Web,” accessed May 20, 2025, <https://kek.go.id/id>.

²⁴ Sekar Nasly Bani Putri, “Kawasan Perdagangan Bebas Dan Pelabuhan Bebas (KPBPB): Karakteristik, Manfaat, Dan Contoh,” *Pajakku* (blog), July 4, 2024, <https://artikel.pajakku.com/kawasan-perdagangan-bebas-dan-pelabuhan-bebas-kpbpb-karakteristik-manfaat-dan-contoh/>.

²⁵ Kompas Cyber Media, “Daftar 122 Kawasan Industri di Indonesia, dari Aceh hingga Maluku Utara,” *KOMPAS.com*, March 17, 2022, <https://regional.kompas.com/read/2022/03/17/135613178/daftar-122-kawasan-industri-di-indonesia-dari-aceh-hingga-maluku-utara>.

²⁶ Benedikto Almando, “IMPLEMENTASI KEPEMILIKAN PROPERTI BAGI ORANG ASING DI INDONESIA,” *Jurnal Paradigma Hukum Pembangunan* 8, no. 2 (August 30, 2023): 197–212, <https://doi.org/10.25170/paradigma.v8i2.5195>.

- 1) Jakarta: IDR 3,000,000,000.00 (three billion rupiah)
- 2) Banten, West Java, Central Java, East Java, Yogyakarta Special Region, and Bali: IDR 2,000,000,000.00 (two billion rupiah)
- 3) All other Indonesian provinces: IDR 1,000,000,000.00 (one billion rupiah).

Given these restrictions on condominium ownership, sarusun units developed under Right to Build arrangements do not qualify as public housing condominiums, the category specifically established by the government to fulfill the constitutional right to adequate housing. Article 1 (7)-(10) of the Condominium Law formally classifies Indonesian condominiums into four types:

- a. Public Housing Condominiums: Designed to provide affordable housing for low income communities.
- b. Special-Needs Condominiums: Developed to accommodate specific groups (e.g., civil servants, military personnel).²⁷
- c. State-Owned Condominiums: Residential properties owned by the state to provide housing for public officials, support family welfare programs, and facilitate government operations.
- d. Commercial Condominiums, as defined under Article 1 (10) of the Condominium Law, are specifically developed for profit-oriented purposes.

This category constitutes the exclusive type of condominium unit permitted for foreign national ownership, with the fundamental statutory precondition that such ownership arrangements shall not adversely affect the primary welfare interests of the Indonesian citizens.

2. Thailand

Thailand recognizes two types of residential buildings are registered apartments under the Thailand Condominium Act, and unregistered or non-compliant apartments. Foreign ownership of condominiums in Thailand is governed by the Condominium Act B.E. 2522 (2008), which defines a condominium as a building where individuals may hold separate ownership of individual units, comprising both private ownership of the unit and shared ownership of common property. This definition demonstrates a shared ownership system similar to Indonesia's framework. Article 19/2 bis of the Condominium Act B.E. 2522 (2008) stipulates that in any condominium, foreign nationals or foreign legal entities, as specified in Article 19, may collectively hold ownership of no more than forty-nine percent (49%) of the total floor area of the condominium at the time of registration. Proof of condominium ownership is evidenced by the issuance of a Condominium Certificate (known as Chor 2 in Thai), which is registered and administered by the Land Office.²⁸

²⁷ Muhdany Yusuf Laksono, "Apa Itu Rusun Khusus? Berikut Pengertian Hingga Sistem Kepemilikannya," accessed May 18, 2025, <https://www.kompas.com/properti/read/2022/06/30/060000521/apa-itu-rusun-khusus-berikut-pengertian-hingga-sistem-kepemilikannya>.

²⁸ Intan Monika and Dinda Keumala, "PERBANDINGAN KEPEMILIKAN SRS DENGAN APARTEMEN UNTUK ORANG ASING DI INDONESIA DAN THAILAND," *Reformasi Hukum Trisakti* 3, no. 3 (August 1, 2021): 345–53, <https://doi.org/10.25105/refor.v4i3.13842>.

A key requirement for foreign nationals seeking to acquire condominium units in Thailand is that the purchase must be transacted in foreign currency (non-Thai Baht). This regulation serves two primary policy objectives: maintaining the stability of the Baht exchange rate, and preventing speculative purchases by local actors under the guise of foreign ownership (or vice versa). Furthermore, this mechanism ensures that foreign acquisitions generate foreign exchange inflows (devisa), thereby directly contributing to Thailand's balance of payments.

The Condominium Act B.E. 2522 (2008) does not explicitly regulate the duration of foreign ownership of condominium units in Thailand. Such ownership cannot be freely transferred between foreign nationals; rather, any transfer requires approval from competent authorities, subject to the conditions stipulated in Article 19 of the Act. Foreign ownership rights terminate upon the owner's death, as inheritance of such property is expressly prohibited.

3. Turkey

The legal framework governing property ownership and land rights in Turkey is established under The Constitution of the Republic of Turkey. Article 35 of the Constitution stipulates: " (1) *Every individual possesses the inherent right to property ownership and inheritance*; (2) *These rights may be subject to legal restrictions solely in the interest of public welfare*; (3) *The exercise of property rights shall not contravene public interest*." This constitutional provision guarantees the right to own and inherit land and buildings, while mandating adherence to the principle of public interest. This aligns with Indonesian legal doctrine, where all land rights incorporate a social function, recognizing that while the state protects property rights, land cannot be utilized exclusively for private benefit. Further codification exists in Article 683 of the Turkish Civil Code, which grants landowners the right to utilize their property within legal boundaries to derive benefits; or transfer rights to third parties, subject to regulatory limitations.²⁹

A distinctive characteristic of Turkey's land ownership system is the substantial proportion of state-owned land, held either directly (under the authority of the Undersecretariat of Treasury) or indirectly through Ottoman-era endowments (*vakıf*) and inheritance mechanisms. Turkish law recognizes two primary land rights for individuals and legal entities: (1) Freehold (absolute ownership) and (2) Leasehold (temporary use rights). Under Turkish legislation, foreign nationals face stringent land ownership restrictions:

- a. Prohibited zones: Rural areas and military districts are categorically excluded from foreign ownership.
- b. Area cap: The total land area owned by foreigners cannot exceed 30 hectares (ha).
- c. Property-type restrictions: While foreign ownership of residential properties (e.g., condominiums) is permitted under conditions, landed

²⁹ Listyowati Sumanto, "Pembatasan Pemilikan Hak Atas Tanah Oleh Orang Asing Dan Badan Hukum Asing (Studi Perbandingan Indonesia - Turki)," *Jurnal Hukum PRIORIS* 3, no. 3 (May 17, 2016): 67–102, <https://doi.org/10.25105/prio.v3i3.369>.

properties (freehold land) are prohibited under the Turkish Reservation Act, which reserves certain territories exclusively for Turkish citizens.

These limitations reflect Turkey's constitutional doctrine that land ownership transcends mere economic transactions, encompassing national sovereignty and strategic interests.

Foreign nationals are permitted to acquire property rights in Turkey under the principle of reciprocity, whereby citizens of states that grant reciprocal property acquisition rights to Turkish nationals may purchase real estate in Turkey. This reciprocity clause applies specifically to nationals of the following states: Germany, the United States, Argentina, Australia, France, the United Kingdom, Canada, Kenya, Colombia, Venezuela, Peru, Chile, Ireland, the Netherlands, Norway, Guatemala, and Greece. Article 35 of The Constitution of the Republic of Turkey establishes that, based on de facto and de jure reciprocity within legal limits, foreigners may acquire immovable property for residential or commercial purposes, provided that:

- a. The property is registered and complies with zoning regulations;
- b. The total area of immovable property and real rights held by a single foreign national does not exceed 2.5 hectares/person.

Such property ownership may be transferred via inheritance or testamentary disposition, subject to verification of continued reciprocity compliance.

This comparative analysis reveals that while the physical structures of buildings may be similar, the legal frameworks of these three nations are fundamentally shaped by their respective national legal policies, economic objectives, and principles of territorial sovereignty. Indonesia adopts a protective approach toward foreign property ownership, maintaining a cautious stance rooted in the principle of prudence. Thailand demonstrates a more pragmatic and economically-driven approach, prioritizing investment facilitation. And Turkey pursues a liberal and pro-investment strategy, establishing itself as one of the most competitive jurisdictions for foreign property ownership.

Given the fundamental characteristics of civil law systems, which uphold the principle of legality and territorial sovereignty. It is normatively justified to impose stringent conditions and limitations on foreign nationals' property ownership. While Indonesia, Thailand, and Turkey have each developed distinct legal mechanisms to accommodate foreign ownership of condominium units, all three jurisdictions maintain regulatory frameworks that prioritize national interest protection, social stability preservation, and agrarian sovereignty safeguarding. These policy divergences exemplify how civil law systems strategically balance foreign direct investment attraction and also protection of land rights as strategic national assets.

4. CONCLUSION

The regulatory changes concerning foreign nationals' property ownership following the enactment of the Job Creation Law are as follows: The Job Creation Law expands provisions on property in Indonesia, permitting foreign nationals to own individual units within multi-story buildings (apartments) under Right of Use. Under the principle of *Lex Posterior Derogat Legi Priori*, the Job Creation Law takes precedence

over the Agrarian Law in cases of inconsistency to ensure legal certainty. Granting foreign nationals access to property ownership will create investment opportunities and stimulate local economic activity. The Job Creation Law does not displace the principle of nationality, as apartment ownership adheres to the horizontal separation principle. Thus, an individual may own an apartment unit without directly owning the underlying land, holding instead a shared land right. The amendments introduced by the Job Creation Law primarily aim to adapt to global investment demands while upholding the fundamental principle of nationality, which remains in force.

Terms and limitations of condominium ownership by foreign nationals under the applicable legislation, a comparative analysis of Indonesia, Thailand, and Turkey. Indonesia maintains the principle of nationality in its property ownership regime, reflecting a protective approach toward foreign ownership. In contrast, Thailand employs a more open condominium ownership system, albeit with a restriction that foreign ownership may not exceed 49% of the total building area. A key requirement is that the purchase funds must originate from abroad, indicating a pragmatic and economically driven policy. Meanwhile, Turkey adopts a more liberal system, granting foreign nationals greater flexibility to acquire property, including condominiums, provided the property is located within permitted zones under Turkish law. This demonstrates a pro-investment and competitive approach, positioning Turkey as one of the most foreign-friendly property ownership regimes.

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