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# Legal Aspect of Land Tenure Strategies by Foreign Nationals (Case of District of Jepara, Indonesia)

Muhammad Roykhan Rashif Aulia <sup>1</sup>,  
Edith Ratna Mulyaningrum S.<sup>2</sup>, Amarru Mufftie Holish<sup>3</sup>

<sup>1</sup> Master of Notary Program, Universitas Diponegoro, INDONESIA

<sup>2</sup> Notariat Office & PPAT Dr. Edith Ratna M.S., S.H., INDONESIA

<sup>3</sup> Oñati International Institute for the Sociology of Law, SPAIN

 [royrashifmkn@gmail.com](mailto:royrashifmkn@gmail.com)

## ABSTRACT

Great potential in investment invites many parties to develop their business in Jepara Regency. The government regulates the control of

Indonesian land for foreign nationals in the form of use rights. However, in reality, foreign nationals in Jepara do not use the Right to Use but use other forms of land tenure. This study aims to analyse Legal Review Of Land Tenure Strategies By Foreign Nationals In The District Of Jepara. In this study using qualitative methods, the method of collecting data through interviews and documentation which then the results of data analysis using descriptive analysis. The results of the study found that the form of strategies and methods of land tenure by Foreign Citizens in the Regency by a) Marrying Indonesian citizen by acting on behalf of his wife as the right holder. b) Living together without marital status by way of an agreement on property by both parties c) Leasing a foreign citizen with a local resident d) Through a foreign legal entity established in Indonesia to control land in Jepara Regency.

**Keywords:** *Foreign Nationals; Land Tenure; Right of Use*

## INTRODUCTION

Soil is the surface of the earth where humans live and develop. Land is needed by humans to carry out all their activities, so that in their natural relationship they are very close and inseparable<sup>1</sup>. Land is a very valuable asset.<sup>2</sup> It is not surprising that every human being wants to own and master it. However, in his control of the existing land is very limited and never increases. This is a conflict of interest between the individual and the community groups in it.

There are more than 270 million people in Indonesia, so the need for land used for residential and business purposes will increase. Indonesia is one of the destinations for foreign investment which has a lot of potential.

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<sup>1</sup> Rofi Wahanisa, *Reforma Agraria Untuk Kesejahteraan Rakyat*, Semarang: Fastindo, 2019, p 5.

<sup>2</sup> Suhadi & Rofi Wahanisa, "Tinjauan Yuridis Normatif Berbagai Peraturan Tentang Alih Fungsi Tanah Pertanian di Indonesia", *Journal Pandecta*, Vol. 6 No. 1, 2011, pp. 70-78.

Proven to be reported at 4.6 USD bn in December 2021 (nominal amount of Foreign Investment in Indonesia). Jepara Regency is one of the regions in Indonesia that has a lot of potential business development and sufficient strategies in the dynamics of economic development. It is proven that the amount of 61.1 trillion foreign direct investment in Jepara Regency in the first quarter of 2022.

In general, people in the Jepara Regency make a living in the furniture business. It is recorded that at least 6 centuries (six hundred years) of carving development in Jepara Regency from the 15th century to the 21st century.<sup>3</sup> The reputation of Jepara Regency has attracted economic activities related to the production of wood furniture processing.<sup>4</sup> Jepara is known to already have a very good marketing network. The wider the network that forms people's interest in certain social strata, the variety of products is growing. No wonder many foreign nationals open a furniture business in Jepara Regency. The reason is that the price of making the product is quite cheap, so it can compete in both local and international markets.<sup>5</sup>

Jepara Regency is located in the north of Java Island, where the west and north are bordered by the sea. Jepara has a coastline of 82.72 km and an ocean area of 1,845.5 km<sup>2</sup>. Jepara also has a total of 29 islands (5 inhabited islands and 24 uninhabited islands). This makes the existence of Jepara Regency has a beautiful natural beach charm.<sup>6</sup> Along with the potential for natural beauty in Jepara which directly has an impact on

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<sup>3</sup> Darmawanto, "Perancangan Monumen Identitas Kota Jepara Berbasis Ukir Tradisi Menggunakan Metode Black Box", *Corak Jurnal Seni Karya*, Vol. 8 No. 2, 2019, pp. 143-160.

<sup>4</sup> Sandhopi Lukman Zaman & Yosi Kristian, "Identification of Jepara Motifs on Carvings by Utilizing Convolutional Neural Network", *Jurnal Nasional Teknik Elektro Dan Teknologi Informasi*, 2020, Vol. 9 No. 4, pp. 403-413.

<sup>5</sup> Sofiana, *Analisis Strategi Peningkatan Produksi Mebel Di Sentra Industri Kayu, Humaniora*, 2011, p. 10.

<sup>6</sup> Admesia Iyangjaya Peringatan, Sulistyowati & Reni Windiani, "Strategi Pemasaran Pariwisata Kabupaten Jepara", *Journal Of Politic And Government Studies*, Vol. 2 No. 3, 2013, pp. 1-19.

increasing the tourism sector and the country's foreign exchange<sup>7</sup>. Tourism activities automatically open up opportunities for the hospitality, restaurant, entertainment, transportation and service trade sectors. This is of course a good indicator of the progress of the development of the tourism sector in Jepara Regency.

The existence of great potential in investment, invites many parties to develop their business in Jepara Regency. In its development, it definitely requires land for its business, both local—Indonesian citizens to foreign citizens. Land issues are increasing complex when Foreign Citizens are required to stay in Indonesia for job development, or investment and want to control Indonesian land.

Land rights for Foreign Citizens and/or Foreign Legal Entities for both business and residential purposes are granted with terms and period limitations. These restrictions are regulated in Article 42 of the Basic Agrarian Law concerning the provisions of the Right to Use. Further provisions regarding Use of Use Rights are regulated in Government Regulation No. 40 of 1996 concerning Business Use Rights (HGU), Building Use Rights (HGB) and Use Rights. Restrictions on the ownership of Foreign Citizens regarding Right to Use are also regulated in Government Regulation Number 103 of 2015 concerning Ownership and Residential Houses or Occupancy by Foreign Citizens domiciled in Indonesia.

In reality, foreign nationals are not in a position as the party that has full power or the most power over the object. There are many activities that take legal loopholes regarding the interests of foreign nationals by involving Indonesian citizens. These actions include legal smuggling which can cause legal problems in the future.<sup>8</sup>

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<sup>7</sup> Faqih Kurniaan Fadilah, "Penerapan Arsitektur Ekologis pada Bangunan Resort Tepi Pantai Karimunjawa", *Jurnal Sains Dan Seni Institut Teknologi Surabaya*, Vol. 7 No. 2, 2018, pp. 2337-3520.

<sup>8</sup> I Dewa Agung Dharma Jastrawan & I Nyoam Suyatna, "Keabsahan Perjanjian Pinjam Nama (Nominee) Oleh Warga Negara Asing Dalam Penguasaan Hak Milik Atas Tanah Di Indonesia", *Journal Kertha Semaya Universitas Udayana Bali*, Vol. 7 No. 2, 2019, pp. 1-19.

## METHOD

The research approach used by the author is qualitative research, producing descriptive data in the form of written or spoken words from people and observed behavior. The type of research used in this research is empirical juridical research or commonly referred to as sociological legal research. Briefly, this study aims to find information about the forms of land tenure strategies by foreigners in Jepara Regency. This study looks at the provisions in the laws and regulations governing land tenure by foreign nationals in Jepara Regency. The author will look at the forms of land tenure strategies by foreign nationals in Jepara Regency and strategies for land tenure by foreign citizens in Jepara Regency. This research was conducted by taking the location at the Land Office of Jepara and foreign nationals in Jepara. Data sources in this study consist of primary data sources, secondary data sources, and tertiary data sources. Primary data sources were obtained through interviews. The informants in this study were Budiana S. Kom. as a functional position of land administrator at the Jepara Regency Land Office, Zeni Rosmawati as Kim Min Seong's wife (foreign citizen from Incheon, South Korea), Khadiroh as Kim Sang joong's wife (foreign citizen from Busan, South Korea), Nike Ardite as Jong's wife Hun (Foreign Citizen from Gangnam, South Korea), Deni Kurnianto as the right-hand man of the company owned by Stephane Mecucci Micucci (Foreign Citizen from Saint Marteen, France), Sari Puji Lestari as the right-hand man of the company owned by Kwon Yang Hoe (Foreign Citizen from Korea) ) as a resource for Foreign Citizens and Budi as the secretary of the Miftah Arifin Notary Office. Secondary data sources were obtained through books, articles, laws and regulations, while tertiary data sources were obtained through legal dictionaries and encyclopedias related to the research conducted. Data collection techniques were carried out by means of interviews, observations, literature studies, and documentation. To analyze the data in the study, the following steps were used: Data

collection, Data reduction, Data presentation, and Conclusion drawing and verification.

## RESULT & DISCUSSION

Article 26 paragraph (2) of the Basic Agrarian Law in which only Indonesian citizens can control and have property rights over land. However, the government gives rights for foreign citizens to control Indonesian land, one of which is using the Right to Use. Use rights are specifically regulated in Articles 41-43 of the Basic Agrarian Law, Articles 39-58 of Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights and Articles 1 to 13 of Government Regulation Number 103 2015 concerning Ownership of Residential Or Occupancy Houses by Foreigners Domiciled in Indonesia. With a total of 780 foreign nationals consisting of 112 women and 688 men living in all Districts of Jepara Regency. Only about five or less than ten foreign nationals use the Right to Use. The facts that exist in the community (Foreign Citizens) who are domiciled in Jepara Regency actually use other forms other than Hak use in their control, such as:

### 1. *Marrying Indonesian Citizen*

Marrying local residents or local residents has become a mode for foreign nationals to own and control land in Jepara Regency. By law, husband and wife in mixed marriages must comply with the provisions of the applicable marriage law in Indonesia, namely Law Number 1 of 1974 concerning Marriage. Mixed marriages, when viewed from the marriage law in force in Indonesia, are marriages between Indonesian citizens and foreign nationals which are held in Indonesia.<sup>9</sup>

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<sup>9</sup> Justitia Henryanto Ghazaly, "Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran", *Journal Cendekia Hukum*, Vol.5 No. 1, 2019, pp. 117.

The regulation of property in marriage has been regulated in Articles 35, 36 and 37 of Law Number 1 of 1974 concerning Marriage. Article 35 explains that all assets acquired during the marriage period are joint property or property owned jointly proportionally, with respect to assets acquired and brought before the marriage period, which is called innate property, becomes the property of each party as long as the parties agreed not to bind it into joint property. Further provisions in Article 36 essentially emphasize that any discussion or transfer of joint assets can be carried out by a husband or wife as long as it is approved by both parties and for assets with the status of inherited assets, all discussions or transfers can be carried out unilaterally by either the husband or wife who is entitled to it. to the property. All assets that exist and are obtained during the marriage are joint treasures so that these assets become joint assets.<sup>10</sup>

Ownership of land for foreign nationals who have mixed marriages in Jepara has become a concern for most members of the community. In mixed marriages if they use a prenuptial agreement then there is no mixing of assets so that the assets owned by the parties belong to each according to the agreement.<sup>11</sup> On the other hand, if the mixed marriage does not make a Marriage Agreement, then the property owned during the marriage becomes the joint property of the couple, in other words, the foreign citizen also owns half of the land. So that Indonesian citizens who are married to foreign nationals (without a marriage agreement) are forced to comply with the provisions of the regulations intended for foreign nationals.

Indonesian citizens who have already entered into mixed marriages without a marriage agreement, the land owned in Indonesia should be transferred immediately by selling or giving it to parents, children, siblings or relatives. In accordance with the regulation of Article 21 (paragraph (3)

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<sup>10</sup> Faizal Liky, "Harta Bersama Dalam Perkawinan", *Ijtimaiyya: Journal Pengembangan Masyarakat Islam*, Vol. 8 No. 2, 2015, pp. 77-102.

<sup>11</sup> Marsidah, "Perjanjian Perkawinan Antara Suami Istri Berdasarkan Undang-Undang Perkawinan", *Solusi Journal Palembang University*, Vol. 18 No. 2, 2020, pp. 218-288.

of the Basic Agrarian Law, this results in the right to land being nullified and falling to the State without compensation. The requirements for the application for land ownership rights include: An application form that has been filled in and signed by the application or its proxy on a sufficient stamp duty.

1. Power of attorney if authorized.
2. Photocopy of the identity of the applicant's Identity Card and Family Card and proxy if authorized, which has been matched with the original by the counter officer.
3. Original proof of land acquisition or title.
4. Original proof of relinquishment of rights and settlement of land and houses or houses purchased from the government.
5. Photocopy of the registration certificate for the Tax Return (SPPT), Land and Building Tax (PB), Customs Deposit (SBB), Land and Building Acquisition Fee (BPHTB) and proof of payment of income (at the time of registration of rights).<sup>12</sup>

## *2. Live Together Without Marital Status*

At first glance, it is almost similar to the form of land tenure by foreign nationals through marriage or living together with Indonesian citizens. However, the only difference is that there is no relationship status, whether married under Indonesian law or religiously. If there is no marriage there is also no prenup in the relationship. So that related property is only an agreement by both parties. This is where the mutualism symbiosis is established, foreign citizens take advantage of Indonesian citizens to obtain land through third parties and the benefits of Indonesian citizens become the rights holders and owners of the land they control.<sup>13</sup>

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<sup>12</sup> Juosfiel Sadpri Pansariang, "Proses Dan Syarat Untuk Memperoleh Hak Milik Atas Tanah Di Indonesia", *Journal Lex Privatum*, Vol. 2 No. 3, 2014, pp. 28-38.

<sup>13</sup> Trie Sakti, "Penelitian Pengendalian Penguasaan Tanah Oleh Warga Negara Asing", NA-Rxiv Papers, 2019, pp. 1-53.



The method of transferring rights in the sale and purchase of land by foreign nationals on behalf of a third party is the same as buying and selling land in general, because the subject of the right holder is an Indonesian citizen. The process involves making a deed of sale and purchase of land and managing the title transfer at the local land office.

According to Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration, the Sale and Purchase Deed is legal evidence. The initial step in buying and selling land and buildings is to go to the office of the official who made the land deed to get information about the buying and selling process and prepare the requirements for the buying and selling process.

Before making a sale and purchase, the official making the land deed will explain the necessary steps and requirements:<sup>14</sup>

1. Checking property tax deposit certificates and receipts
2. Consent of husband and wife
3. Tax fees and deed of sale
4. Creation and signing of deed
5. Process of changing names at the land office

### 3. Lease

Foreign citizens also often practice the transfer of rights through renting. This is regulated in Article 45b of the Basic Agrarian Law which stipulates that foreign nationals can be subject to a meyawa lease. Rent is regulated in Article 1548 to Article 1600 of the Civil Code. Article 1548 of the Civil Code, what is meant by leasing is an agreement, whereby the party who binds himself to provide an item for a certain period of time and with the payment of a party is later agreed to pay it. Leasing is an agreement between the

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<sup>14</sup> Akur Nurasa & Dian Aries Mujiburohman, "Tuntunan Pembuatan Akta Tanah", STPN Press & DIVSTPN, 2020, pp. 63.

lessor and the lessee<sup>15</sup>. Lease agreement made or carried out by several parties or persons indicates that everyone who enters into the agreement is ready to carry out his obligations as agreed<sup>16</sup>.

Lease is an agreement between the lessor and the lessee. Lease is an individual agreement, not a material agreement. Basically, the property rights do not transfer but become the property of the lessor. Objects that are handed over are not to be owned, but only enjoyed for a certain time.

Many foreign nationals come to Jepara Regency for business purposes in the furniture sector which is not surprising if it is dubbed "The World Carving Center". The reputation of Jepara Regency has invited many economic activities related to the production and processing of wooden furniture. Just like Stephane came and used Indonesian land for his business development. The owner of the furniture business, named Global Indonesian and Foreign Trading, is only a dropshipper, so he doesn't need large land or buildings for product processing.

This lease right is basically the right of a lease agreement between a foreign citizen and a land owner, which rents out to the land owner by paying the rental price and agreeing on a certain period of time. However, the weakness of rights is only temporary and cannot control the land in full.

How to control through leasing, says that the lease agreement can be formed and mutually agreed upon between the two parties, namely the lessee and the lessor.<sup>17</sup> Then the two parties go to the notary for the agreement letter before the notary and the agreement is ratified by the notary. This agreement is an underhand agreement because the agreement was made by both parties not by a notary. The lease agreement can also be made with a notarial deed then signed by the notary and both parties.

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<sup>15</sup> Aprilianti, "Perjanjian Sewa Guna Usaha Antara Lessee Dan Lessor", *Fiat Justitia Jurnal Ilmu Hukum*, Vol. 5 No. 3, 2011, pp. 313-323.

<sup>16</sup> Minstyn Tambunan, "The Responsibility Of A Shop House Tenant (Ruko) If Damage Happen When The Rental Agreement Ends", *Journal of Law Science*, Vol. 3, No. 1, 2021, pp. 1-6.

<sup>17</sup> Euginie Vita Paulina Kaseger, "Pemilikan Hunian Oleh Warga Negara Asing Di Indonesia", *Journal Lex Et Societatis*, Vol. 2 No. 1, 2014, pp. 55-64.

#### 4. *Legal Entity*

The need for land in Jepara Regency is increasing along with the development of the economy and other needs related to land. With the era of globalization and the increasingly open opportunities for investors to invest and open businesses to own property in Jepara Regency, it is getting bigger.

The regulation of land tenure by legal entities established under Indonesian law and domiciled in Indonesia is regulated in PP Number 40 of 1996 concerning Cultivation Rights, Building Use Rights and Land Use Rights. Right to Cultivate in Article 2b, Right to Build in Article 19b and Right to Use in Article 39b. The existence of Regulations for Foreign Citizens like this is an effort by the government in providing services for investors in the country. That way the Foreign Citizens or Foreign Legal Entities get guarantees.

Land use rights as one type of land rights that can be regulated in the UUPA have characteristics that can distinguish use rights from other land rights, namely they can be owned by foreign citizens and foreign legal entities that have representatives in Indonesia. This can show that the Right of Use functions as a supporter of implementation in state development. However, the government provides convenience to foreign legal entities in terms of implementing investments in Indonesia as regulated in the Capital Market Law. This is clearly contrary to the principle of Nationalism in the UUPA.<sup>18</sup>

## CONCLUSION

The facts that exist in the community (Foreign Citizens) who are domiciled in Jepara Regency actually use other forms other than usufructuary rights

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<sup>18</sup> Desy Nurkristia Tejawati, "Penguasaan Hak Atas Tanah Bagi Badan Hukum Asing Di Indonesia", *Journal Kajian masalah hukum dan Pembangunan Perspektif*, Vol. 26 No. 1, 2021, pp. 39.

in their control, such as: a) Marrying Indonesian citizen on behalf of his wife as the right holder. b) Living together without marital status by means of land tenure by mutual agreement between the two parties c) Lease between Foreign Nationals and owners of land or buildings by Indonesian Citizens d) Foreign Legal Entities established in Jepara Regency.

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### *About Author(s)*

**Muhammad Roykhan Rashif Aulia**, is currently studying Master of Notary at Diponegoro University, Semarang, Indonesia.

**Dr. Edith Ratna M.S., S.H.** is a lecturer at the Master of Notary Diponegoro University. The author also serving as Notary and land deed official in the city of Semarang, Indonesia.

**Amarru Mufftie Holish**, is currently studying Master of Socio Legal at Oñati International Institute for the Sociology of Law, Spain.