
Measuring the Openness of Land Investment Policy Related to Housing or Residential Ownership by Foreigners in Indonesia

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Abstract:

The existence of Government Regulation No. 103 of 2015 concerning Housing or Residential Ownership by Foreigners Occupied in Indonesia which contains a climate of openness for foreigners raises the problem of government openness policy in the field of land investment.

One of the problems contained in the Government Regulation No. 103 of 2015 as a breakdown of Law No. 5 of 1960 concerns the Basic Regulations of Agrarian Principles and Law No. 5 of 2011 concerning immigration is the duration of the right of use. This duration is 80 years containing a climate of openness to foreigners. This period is longer than the enactment in the Government Regulation No. 41 of 1996 which regulates the same matter.

This research is a normative juridical research using statute approach, conceptual approach and comparative approach. Comparisons are made between the existing primary legal materials, mainly between Government Regulation No. 103 of 2015 and the previous Government Regulation concerning the same matter, that is Government Regulation No. 41 of 1996.

Keywords: *Housing ownership, residential by foreigner in Indonesia, Government Regulation No. 103 of 2015, land investment.*

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1. Introduction

Having a comfortable dwelling is everyone's dream. Not only domestic investors, but foreign investors are also attracted to invest in residential either in the form of house or apartment. The need to own a residential is sometimes no longer to fulfill one of the basic human needs of a "wood", as the viewpoint of most Indonesian people that "food, clothing and wood" are the basic necessity for human to live. This is called the physical need by Abraham Maslow, but more than that, to own a residential is becoming a form of investment to reach a more feasible living.

Speaking about residential, whether in the form of a house or apartment, it must not be separated from the discussion of land rights. Land rights derive from the government right of controlling the land which may be granted to individuals, either citizens of the Republic of Indonesia or foreigners, a group of people, and legal entities both private and public (Santoso, 2008). This stems from the provisions of land rights regulated in Article 4 paragraph (1) of Law No. 5 of 1960 concerning the Basic Regulation of Agrarian Principles (hereinafter referred to as Law No. 5 of 1960), namely: *"On the basis of the right of control of the state of land as referred to in Article 2, it is determined that there are various kinds of rights to the surface of the earth, called land, which can be acquired to and possessed by people, either alone or together with the others as well as legal entities."*

The regulation of land rights is important because it authorizes the holder, whether it is the authority to use the land, including the layers of earth, water and space above it, as well as the special powers to use the land according to the type of land rights. Ownership of houses or residential by foreigners occupied in Indonesia is closely linked to the land rights, in which it is permitted by the government to build residence for foreigners is the Right of use. Right of use is a kind of land right granted to foreigners occupied in Indonesia, as well as foreign legal entities that have their representatives in Indonesia under the provisions of Article 42 of Law No. 5 of 1960. This provision provides the legal basis for foreigners or foreign legal entities to use the land under particular authority on the basis of Right of use.

The emergence of Government Regulation No. 103 of 2015 concerning Housing or Residential Ownership by Foreigners Occupied in Indonesia (hereinafter referred to as Government Regulation No. 103 of 2015) contains a climate of openness for foreigners to have occupancy with Right of use with a longer period of time compared to the Government Regulation No. 41 of 1996 which regulates the same matter that is about Housing or Residential Ownership by Foreigners Occupied in Indonesia (hereinafter referred to as Government Regulation No. 41 of 1996). The 80-years term of entitlement granting is a symptom of openness policy in the field of land investment. This climate of openness is particularly directed to foreign investors.