



## Juridical Review of Foreign Land Ownership in Indonesia Under Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration

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**Abstract** - This study aims to analyze the implications of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration concerning foreign nationals and to examine the legal certainty of foreign land ownership under the Investment Law (PMA) and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). The study highlights inconsistencies in the regulation regarding foreign land ownership, revealing ambiguities in the substantive provisions of Government Regulation No. 18 of 2021. Several articles in this regulation conflict vertically with the Job Creation Law and the Basic Agrarian Law. Consequently, for legal certainty, the government must evaluate and restructure the relevant provisions. Despite strict restrictions on foreign land ownership, certain legal loopholes enable foreigners to acquire land rights through specific agreements. This research employs a normative juridical methodology. Government Regulation No. 18 of 2021 allows foreigners to obtain land rights under the status of Right to Build (Hak Guna Bangunan – HGB), provided they hold a residence permit in Indonesia. Additionally, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) plays a crucial role in ensuring the administrative processes related to land ownership and use by foreign nationals and foreign investment companies comply with legal provisions.

**Keywords:** Right to Build (HGB), Foreign Ownership, Land.

### I. INTRODUCTION

Juridically, the term “land” refers to the surface of the earth, as stipulated in Article 4, Paragraph (1) of Law Number 5 of 1960 of the Republic of Indonesia concerning Basic Agrarian Principles (hereinafter referred to as the Agrarian Law or UUPA). Meanwhile, land rights refer to the entitlement to possess a specific portion of the earth’s surface, which is defined by two dimensions: length and width (Rachmayuni et al., 2021). Article 1, Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) states: “The earth, water, and natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people.”

In the Indonesian legal system, land ownership and utilization are regulated by Law Number 5 of 1960. This law defines various land rights, including ownership rights (hak milik), usage rights (hak pakai), business utilization rights (hak guna usaha), and lease rights (hak sewa). Furthermore, land ownership rights are also governed by Government Regulation Number concerning Land Registration (hereinafter referred to as Government Regulation No. 24/1997, which has been amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Strata Titles, and Land Registration (hereinafter referred to as Government Regulation No. 18/2021). Additionally, the regulations regarding land rights are further elaborated in Ministerial Regulation of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for the Determination of Management Rights and Land Rights (hereinafter referred to as Ministerial Regulation No. 18/2021).

Land rights refer to the legal authority granted to an individual to control and utilize a specific parcel of land according to their needs and interests. This concept emphasizes that landowners have control over the use and management of their land. Furthermore, the “social function” of land rights, as outlined in Article 6 of the Agrarian Law, implies that all land rights carry the obligation to fulfill a social function. This means that land rights cannot be exercised solely for personal gain without considering their impact on society. This principle ensures that land use remains fair, sustainable, and optimally beneficial for the wider community (Sanjaya & Rahmatiar, 2024).

Land ownership is an integral aspect of human rights, playing a crucial role in fulfilling basic needs, personal development, and social necessities (Tresnoputri et al., 2023). The demand for land has increased due to the opportunities for foreign nationals to reside in Indonesia for work and assignments, as well as to support economic growth through investment. Consequently, land ownership has become a significant issue (Sakar, 2021).

In Indonesian land law, legal relationships between individuals—both Indonesian citizens (hereinafter referred to as WNI) and foreign nationals (hereinafter referred to as WNA)—and the earth, water, and airspace, as well as the legal relationships involving individuals and legal acts concerning land, are governed by Law Number 5 of 1960 on Basic Agrarian Principles (UUPA). One of the fundamental principles of the Agrarian Law is the nationality principle, as stated in Article 9, Paragraph (1) of the Agrarian Law, which asserts that “Only Indonesian citizens can have a full legal relationship with the earth, water, and airspace, within the limits set forth in Articles 1 and 2.” Consequently, ownership rights (Hak Milik), building use rights (Hak Guna Bangunan or HGB), and business utilization rights (Hak Guna Usaha or HGU) can only be granted to Indonesian citizens, while foreigners residing in Indonesia are only entitled to usage rights (Hak Pakai) and lease rights (Hak Sewa).

The regulations on land ownership by foreign nationals, as stipulated in Government Regulation No. 18/2021, state that HGU (Business Utilization Rights) may only be granted to Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. In this regard, HGU can be granted over state land and land under management rights (Hak Pengelolaan). Similarly, HGB (Building Use Rights) may only be granted to Indonesian citizens and Indonesian legal entities. Land that may be granted under HGB includes state land, land under management rights, and privately owned land.

Article 69, Paragraph (1) of Government Regulation No. 18/2021 states that “Foreign nationals who may own residential houses or dwellings are those who hold immigration documents in accordance with statutory provisions.” It is important to note that land ownership by foreign nationals or foreign legal entities in Indonesia is limited to: usage rights (Hak Pakai) for a specified period, lease rights (Hak Sewa) for buildings, ownership of strata title units (satuan rumah susun or sarusun), and ownership of residential houses or dwellings. Foreign nationals and foreign legal entities are not permitted to own land under Hak Milik, HGU, or HGB.

This is in accordance with Article 21, Paragraph (1), Article 30, Paragraph (1), Article 36, Paragraph (1), and Article 42 of the Agrarian Law. Furthermore, foreign nationals' ownership of residential houses is regulated under Government Regulation Number 40 of 1996 concerning the Ownership of Residential Houses or Dwellings by Foreign Nationals Residing in Indonesia. This regulation was later replaced by Government Regulation Number 103 of 2015, which reaffirmed that foreign nationals may own residential houses under usage rights (Hak Pakai), provided that they hold a valid residence permit under Indonesian law.

Subsequently, Government Regulation No. 103/2015, was rendered obsolete with the enactment of Law Number 6 of 2023, which formalized Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (hereinafter referred to as the Job Creation Law). Its implementing regulation is Government Regulation No. 18/2021, which governs land management rights, land rights, strata title units, and land registration.

Moreover, according to Article 144, Paragraph (1), Letter (c) of the Job Creation Law, foreign nationals and foreign legal entities may obtain ownership of strata title units (sarusun) provided that they possess the necessary permits in accordance with statutory regulations.

The explanation of this article clarifies that ownership of strata title units by foreign nationals is restricted to specific areas, including Special Economic Zones, Free Trade and Free Port Zones, Industrial Zones, and other designated economic areas.

This regulation confirms that foreign nationals can only own strata title units in certain designated areas. Additionally, there are restrictions on foreign ownership of strata title units, including minimum price requirements, land area limitations, the number of units or plots that can be owned, and the designation for residential purposes. These limitations are further regulated under the Ministerial Regulation on Agrarian Affairs and Spatial Planning/National Land Agency No. 18/2021, specifically Chapter VIII, Article 185, Letter (b) (Saraswati et al., 2023).

Based on the background outlined above, the research aims to address the following questions: How does Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Strata Titles, and Land Registration relate to foreign nationals? And What is the legal certainty regarding land ownership by foreign nationals under the Investment Law and the Ministry of Agrarian Affairs and Spatial Planning regulations?

## **II. METHOD**

This study is a normative legal research employing a qualitative research methodology. The approach utilized in this study is the normative juridical approach. The rationale for selecting this approach is that the primary data used in the research consists of secondary data, which is obtained through a literature review (Abas et al., 2022).

Furthermore, the research specification in this study is descriptive-analytical, which involves providing a comprehensive description of the issues examined while also analyzing solutions to these issues. This approach enables the study to offer concrete explanations regarding specific cases, such as foreign land ownership in the context of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Condominium Units, and Land Registration.

The data collection method employed in this study is library research, which involves gathering materials in the form of legal documents derived from statutory regulations and similar sources. The literature used in this study consists of scholarly writings by legal experts. Subsequently, the collected data is analyzed using a normative qualitative approach, whereby the research is conducted by interpreting and constructing statements found within statutory legal documents (Rahmatiar et al., 2021).

## **III. RESULT AND DISCUSSION**

### **Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Condominium Units, and Land Registration in Relation to Foreign Nationals**

Foreign nationals (FNs) in Indonesia are recognized as one of the subjects of land rights under Indonesian land law. They are granted land rights in the form of the Right of Use (*Hak Pakai*), as stipulated in Article 42 of the Basic Agrarian Law (UUPA). The granting of the Right of Use to foreign nationals is based on the provisions of national land law, which prohibits foreign nationals from owning land under any right other than the Right of Use (Soerodjo, 2021).

The UUPA adheres to the principle of nationality, as stated in Article 9(1) in conjunction with Article 21(1). Article 9(1) of the UUPA stipulates that “only Indonesian citizens may have a full legal relationship with land, water, and airspace within the limits prescribed by Articles 1 and 2.” The term “full legal relationship” in Article 9(1) of the UUPA refers to the principle of nationality (Daningsih, 2013).

In line with this principle, the UUPA stipulates that only Indonesian citizens may hold ownership rights (*Hak Milik*). This is based on the UUPA’s adherence to the nationality principle, as explicitly stated in Article 21(1), which affirms that ownership rights (*Hak Milik*) can only be possessed by Indonesian citizens. Consequently, foreign nationals are prohibited from owning land under ownership rights, and any transfer of ownership rights to a foreign national is deemed legally null and void (Muchsin & Koeswahyono, 2007). If a foreign national

acquires ownership rights over land through inheritance (without a will), they are required to relinquish those rights within one (1) year from the date of acquisition (Sangian, 2017). Failure to do so within the stipulated time frame results in the automatic termination of the ownership rights, and the land reverts to the state. This requirement is stipulated in Article 21(3) of the UUPA (Susanti & Amarini, 2019).

The granting of the Right of Use to foreign nationals regarding property ownership in Indonesia is further regulated under Article 6 of Government Regulation No. 103 of 2015. According to this provision, the Right of Use applies to single houses and condominium units, both of which must be newly purchased. The Right of Use is granted for an initial period of thirty (30) years, extendable for an additional twenty (20) years, and renewable for a further thirty (30) years.

Based on the principle of nationality in the UUPA, the regulations therein prohibit foreign nationals from holding land rights, except for the Right of Use and the Right to Lease for Building Purposes (Hak Sewa untuk Bangunan). Additionally, due to the influence of the *Burgelijk Wetboek* (BW), which links residential property ownership to land rights, foreign nationals may only own houses built on land held under the Right of Use or the Right to Lease for Building Purposes (Ramelan et al., 2015).

The enactment of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Condominium Units, and Land Registration repeals and renders invalid Government Regulation No. 40 of 1996 on Cultivation Rights (HGU), Building Use Rights (HGB), and Land Rights, as well as Government Regulation No. 103 of 2015 on Ownership of Residential Houses or Dwellings by Foreigners Residing in Indonesia. Under the previous legal framework, foreign nationals (WNA) were only granted the right to use land (*hak pakai*) for a limited period. However, with the implementation of Article 69(1) of Government Regulation No. 18 of 2021, "Foreigners who may own residential houses or dwellings are those who possess immigration documents in accordance with statutory provisions." The explanation of Article 69(1) of Government Regulation No. 18 of 2021 clarifies that immigration documents include visas, passports, or residence permits issued by the competent authorities under the applicable immigration regulations (Malli, 2017).

The provisions on Building Use Rights (HGB) as regulated in the Basic Agrarian Law (UUPA) do not contradict Government Regulation No. 18 of 2021. Both legal frameworks prohibit foreign nationals from owning HGB. Article 36(1) of the UUPA explicitly forbids foreign nationals from holding HGB. Government Regulation No. 18 of 2021 further governs land rights, management rights, condominium units, and land registration, allowing foreign nationals to obtain the right to use (*hak pakai*) land in Indonesia. This right to use may be subject to a mortgage (*hak tanggungan*). Foreign nationals who acquire ownership rights, HGU, or HGB over land in Indonesia must relinquish such rights within one year. Failure to do so will result in the automatic termination of these rights, with the land reverting to state ownership (Zamil, 2017).

Government Regulation No. 18 of 2021 was enacted as a legally binding regulation by the government. Indonesia adheres to the doctrine of positive law (Aprita, 2021), wherein the government formulates and enacts statutory regulations to ensure compliance by society. However, the fundamental principles of the UUPA are not fully aligned with Government Regulation No. 18 of 2021, leading to normative discrepancies between these legal instruments. The UUPA holds a higher legal status compared to government regulations (Latif, 2016). Law, by its nature, is a coercive command that may be just and wise or otherwise. Government Regulation No. 18 of 2021 was enacted by the government and contains mandatory provisions, sanctions for violations, and obligations for compliance under state sovereignty.

Given that land ownership is closely linked to government regulations, the scope of this government regulation encompasses management rights, cultivation rights (HGU), building use rights (HGB), and land use rights (*hak pakai*), as well as condominium unit ownership, rights over land management, airspace rights, underground space rights, and land registration. Nevertheless, the UUPA should serve as the foundational legal reference,

considering that Government Regulation No. 18 of 2021 does not explicitly incorporate or acknowledge the UUPA as its legal basis.

The distinction between the UUPA and the Omnibus Law on Job Creation (UU Cipta Kerja) concerning foreign land ownership is evident in Law No 5 of 1960, which stipulates that foreign nationals can only hold land under the right to use (*hak pakai*) status, explicitly excluding full ownership or building use rights (HGB). However, Government Regulation No. 18 of 2021 grants foreign nationals greater flexibility in obtaining land rights under HGB status, provided they hold a residence permit in Indonesia. This provision is not solely aimed at attracting foreign investment and boosting the national economy. Despite the differences between the UUPA and the Omnibus Law on Job Creation concerning land ownership by foreign nationals, the latter remains valid, as the Job Creation Law and its implementing regulations, including Government Regulation No. 18 of 2021, are newer and more specific, thereby taking precedence over older and more general regulations.

For foreign nationals to obtain HGB status on land, they must meet specific requirements, such as holding a Limited Stay Permit Card (KITAS) or a Permanent Stay Permit Card (KITAP). Additionally, the land registration process for HGB status owned by foreign nationals must be conducted through the National Land Agency (BPN). This registration process is subject to the requirements stipulated in Government Regulation No. 18 of 2021.

In legal principles, lower regulations must not contradict higher regulations, a concept known as the hierarchy of statutory regulations. However, in the case of the Omnibus Law on Job Creation and the UUPA, certain hierarchical considerations must be taken into account. The Omnibus Law on Job Creation holds the same legal standing as the UUPA within Indonesia's legislative hierarchy, as both are laws enacted by the House of Representatives (DPR) and carry equal legal authority.

According to Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), foreign nationals are permitted to hold land rights under the status of *Hak Pakai* (Right of Use). This status allows foreigners to own a residence for living purposes under specific conditions and within a predetermined period. The various types of agrarian rights under UUPA include:

1. Ownership Rights

Ownership rights is the strongest and most absolute land tenure right, which is hereditary and perpetual, as stipulated in Article 20, Paragraph (1) of the UUPA. According to Article 21, the following entities are eligible to hold ownership rights:

- a. Only Indonesian citizens can hold ownership rights.
- b. The government may designate specific legal entities that are permitted to hold *Hak Milik* under certain conditions.
- c. Foreign nationals who acquire *Hak Milik* through inheritance without a will or due to asset commingling in marriage, as well as Indonesian citizens who lose their nationality after the enactment of this law, must relinquish such rights within one year of acquisition or loss of citizenship. If the right is not relinquished within this period, it is automatically revoked, and the land reverts to the state, while any encumbrances on the land remain in effect.
- d. Individuals holding dual citizenship (Indonesian and foreign) are not eligible to own land under *Hak Milik*, and the provisions of Paragraph (3) of this article shall apply to them (Putra, 2003).

2. Right to Cultivate

The primary distinction between *Hak Milik* and *Hak Guna Usaha* lies in the nature of ownership: *Hak Guna Usaha* is temporary, whereas *Hak Milik* is permanent (Barata, 2012). As regulated under Article 28 of the UUPA, *Hak Guna Usaha* is a special right granted for economic activities such as agriculture, fisheries, and livestock farming. This right is not available to foreign nationals but may be granted to foreign-invested legal entities under restrictions specified in Article 55 of the UUPA, which states that it applies for a maximum of 20 years. Given that *Hak Guna Usaha* serves economic purposes, its duration is regulated under Article 29 of the UUPA. This right is exclusive to domestic

legal entities, whether of indigenous or non-indigenous origin. However, foreign-invested legal entities may only obtain Hak Guna Usaha if specifically required by laws governing national development planning.

3. Right to Build

The legal subjects eligible to hold Hak Guna Bangunan are specified in Article 36 of the UUPA. This right grants individuals or legal entities the authority to construct and own buildings on land they do not own. Article 35, Paragraph (1) of the UUPA stipulates that Hak Guna Bangunan is granted for a maximum of 30 years, meaning that the holder can utilize the land for construction purposes within the legally specified duration.

4. Right of Use

Hak Pakai grants the right to use and/or exploit land that is directly controlled by the state or owned by another party. This right is subject to conditions stipulated in the official grant decision by the competent authority or in an agreement with the landowner, provided that it does not constitute a lease or land management contract and does not contravene legal provisions. The legal subjects eligible for Hak Pakai, as stated in Article 42 of the UUPA, include:

- a. Indonesian citizens;
- b. Foreign nationals residing in Indonesia;
- c. Legal entities established under Indonesian law and domiciled in Indonesia;
- d. Foreign legal entities with a representative office in Indonesia (Usman, 2014).

5. Lease Rights

Hak Sewa is a form of land tenure that grants individuals or legal entities the authority to lease land owned by another party for the purpose of constructing or utilizing buildings on it.

Over time, the enactment of Law No. 7 of 1958 on the Transition of Agrarian Duties and Authorities led to a comprehensive transfer of responsibilities in the agrarian sector. This law fully transferred all agrarian-related duties and authorities. Subsequent changes included Presidential Decree No. 26 of 1998 on Guarantees for the Obligations of General Banks, which resulted in the establishment of the National Land Agency (Badan Pertanahan Nasional, BPN) as a non-ministerial institution directly accountable to the president. Furthermore, Presidential Decree No. 44 of 1993 on the Position, Main Duties, Functions, Organizational Structure, and Working Procedures of State Ministers elevated the leadership status of BPN to that of a minister, designated as the State Minister for Agrarian Affairs/Head of the National Land Agency (Sunarmi, 2016).

Through these successive policies and regulations, a continuous evolution in the structure and organization of agrarian governance has been observed, aimed at enhancing efficiency and effectiveness in land management and utilization in Indonesia. The existence of conflicts or disputes over land ownership indicates that the UUPA alone lacks the capacity to comprehensively resolve such issues.

The types of land rights that can be traded include Hak Milik, Hak Guna Usaha, Hak Guna Bangunan, and Hak Pakai. The legal validity of land transactions is ensured through an official deed issued by a Land Deed Official (Pejabat Pembuat Akta Tanah, PPAT), which serves as proof of ownership transfer. However, such transactions may be annulled if evidence of fraud, forgery, or other legal violations emerges. According to Soerodjo (2023) certain land tenure rights cannot be traded, particularly Hak Pakai granted for an indefinite period for specific purposes, such as Hak Pakai held by governmental institutions or foreign diplomatic missions. The formal requirements for land transactions must be substantiated by a PPAT deed, which is classified as an authentic legal document (Sisworini et al., 2020).

### **Legal Certainty of Land Ownership for Foreigners According to PMA and ATR**

To enhance investment or capital investment, the government has enacted the Job Creation Law as a breakthrough in promoting capital investment. The purpose of this law, as its name suggests, is to create as many job opportunities as possible for the people of

Indonesia, evenly distributed across the entire territory of the Republic of Indonesia, to fulfill the right to a decent livelihood.

The government has issued implementing regulations for Law No. 6 of 2023 on Job Creation, including Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 on Job Creation and Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Condominium Units, and Land Registration. Government Regulation No. 18 of 2021 was established based on the mandate of Law No. 6 of 2023 on Job Creation to simplify regulations and licensing to encourage a favorable investment climate. The government has facilitated several policy details regarding Management Rights, Condominium Units, Land Rights, and Land Registration.

Following the enactment of Law No. 25 of 2007 on Investment, equal treatment has been granted to both foreign and domestic investors. Equal treatment for domestic and foreign capital is a fundamental principle of investment policy. Article 6, paragraph (1) of Law No. 25 of 2007 states that the government provides equal treatment to all investments from any country conducting investment activities in Indonesia in accordance with applicable laws and regulations.

Legal certainty and law enforcement are key factors in creating a conducive investment climate. A clear legal framework allows the economy to grow through legal institutions. This is because Indonesia, as a developing country, requires substantial funds for infrastructure development. Due to the large financial needs and the insufficient availability of domestic funds, the government invites foreign investors as an alternative means to increase national revenue.

The Basic Agrarian Law, as the national land law and the source of all derivative regulations, has set limitations on land ownership rights. Foreign nationals are not permitted to own land under freehold title. Instead, foreign nationals and foreign investors in Indonesia can only be granted land use rights (Hak Pakai), which have a limited duration, unlike freehold title.

Foreign nationals who wish to acquire land in Indonesia must meet certain conditions, such as a minimum transaction value, a maximum land area, and documentation such as a temporary stay permit (KITAS) or a permanent stay permit. Land use rights have a maximum period of 30 years, which can be extended for another 20 years and subsequently renewed for a maximum of 30 years. The procedure for granting land use rights to foreign nationals in Indonesia is regulated by several laws, including Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Condominium Units, and Land Registration, as well as Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) Regulation No. 29 of 2016 on the Procedures for Granting, Releasing, or Transferring Ownership of Residential Houses by Foreign Nationals Residing in Indonesia.

The procedure for granting land use rights is further regulated by Ministerial Regulation No. 9 of 1999 from the National Land Agency (BPN). The application must be submitted to the local BPN office and must meet the prescribed requirements. If the land in question already has existing rights, it must first be converted into state land through the appropriate procedures, with compensation granted based on mutual deliberation. Foreign nationals seeking land use rights in Indonesia must comply with different requirements and procedures than Indonesian citizens (Darmawan et al., 2020).

The legal certainty of land ownership for foreign nationals in Indonesia is primarily governed by Article 9 in conjunction with Article 21, paragraph (1) of the Basic Agrarian Law (UUPA). The regulations governing the procedures and limitations on foreign ownership of residential property are outlined in Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) Regulation No. 18 of 2021 on the Procedures for Establishing Management Rights and Land Rights (referred to as ATR/BPN Regulation No. 18 of 2021). According to Chapter VIII, Article 185, point b, foreigners who possess valid immigration documents issued by the relevant authorities may own residential properties in the form of condominiums built on: 1) Land with a Land Use Right (Hak Pakai) or Building Use Right (Hak Guna Bangunan) on state land; 2) Land with a Land Use Right or Building Use Right on

management rights land; or 3) Land with a Land Use Right or Building Use Right on freehold title.

However, such condominiums must be categorized as commercial residential units, as stipulated in Article 186, paragraph (1), point b of ATR/BPN Regulation No. 18 of 2021.

Article 188 further explains that:

1. Condominium units owned by foreigners that are built on Land Use Right or Building Use Right land will be granted an Ownership Right of Condominium Unit (Hak Milik atas Satuan Rumah Susun).
2. If the condominium unit owned by a foreigner is built, the joint ownership rights over the condominium unit are calculated based on a Proportional Comparison

Value, consisting of shared parts, shared objects, and excluding shared land.

Additionally, foreign ownership of condominiums is subject to further restrictions under Article 71 of Government Regulation No. 18 of 2021, which sets minimum price limits, land area limits, the number of land parcels or condominium units, and restrictions on their use for residential purposes. These limitations ensure legal certainty, justice, and legal benefits for foreign nationals while protecting the rights of Indonesian citizens (Saraswati et al., 2023).

In the context of Foreign Direct Investment (FDI), land ownership regulations are governed by several legal frameworks. FDI refers to capital investment activities, serving as a source of international finance, where funds are utilized by investing in businesses or projects undertaken by productive companies, either directly or indirectly. In Indonesia, FDI allows foreign investors to obtain specific land rights, including the Right to Build (Hak Guna Bangunan, HGB), the Right to Cultivate (Hak Guna Usaha, HGU), and the Right of Use (Hak Pakai). Specifically, FDI entities can acquire HGU for agricultural, fisheries, or plantation businesses for a maximum period of 35 years, with the possibility of extension. Meanwhile, HGB is granted for commercial building purposes, allowing foreign companies to obtain land use rights for up to 30 years, which can also be extended.

Legal certainty in this regard is ensured by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), which plays a crucial role in administering land ownership and land use processes for foreign individuals and FDI enterprises. The technical regulations issued by the ATR/BPN are designed to provide legal certainty, thereby encouraging both domestic and foreign investors to establish businesses within the territory of the Republic of Indonesia. As an archipelagic country endowed with abundant natural resources, Indonesia possesses vast land areas, making it an attractive destination for investors. This investment appeal has been present since the New Order era and continues to the present day.

The increase in foreign direct investment in Indonesia does not occur spontaneously but requires extensive efforts to create a conducive investment climate. Challenges include legal enforcement issues, infrastructure limitations, security concerns, and socio-political stability. The direct growth of foreign investment involves funds being directly utilized for business operations or for procuring equipment and production facilities, such as purchasing land, establishing factories, importing machinery, and acquiring raw materials. Foreign investment tends to grow rapidly in countries or regions that offer high financial returns and substantial investment capacities.

Regarding government-led investment initiatives and the acceleration of National Strategic Projects, the land-related provisions of the *Omnibus Law on Job Creation* are regulated under Articles 136 to 142, which address the strengthening of land management rights. Additionally, Articles 143 to 145 discuss residential units for foreigners, Article 146 regulates the granting of rights over subterranean and aerial space, and Article 147 outlines other relevant provisions. To implement the mandates of Article 142 and Article 185(b) of the *Omnibus Law on Job Creation*, Government Regulation No. 18 of 2021 on Land Management Rights, Land Rights, Apartment Units, and Land Registration was enacted. The primary objective of this regulation is to codify and simplify existing rules by consolidating multiple legal provisions, replacing outdated norms, and introducing new regulations to align with



contemporary legal and societal needs. For instance, foreign nationals holding a residence permit in Indonesia are permitted to own residential properties, either in the form of a single-family house or an apartment unit (Muliadi, 2015)

#### **IV. CONCLUSION**

Based on the discussion above, the following conclusions can be drawn:

1. Law No. 5 of 1960. and its implementing regulations provide clear legal provisions regarding land ownership in Indonesia. Article 21(1) of Law No. 5 of 1960 explicitly states that only Indonesian citizens (WNI) and certain legal entities designated by the government are entitled to own land under the Hak Milik (ownership right) title. Foreign nationals (WNA) and foreign legal entities are prohibited from acquiring Hak Milik over land in Indonesia. Under Indonesia's land law system, foreign nationals are not eligible to obtain land rights, except for the Hak Pakai (Right of Use). Similarly, foreign legal entities are restricted, although foreign investors may acquire land through a nationally registered company under the FDI framework, in accordance with Indonesian legal provisions. For residential purposes, foreign nationals may lease properties owned by Indonesian citizens or, if they wish to construct their own homes, they may utilize land under leasehold or Hak Pakai. Legal entities, whether wholly foreign-owned or joint ventures with Indonesian capital, are permitted to utilize land for business activities under Hak Guna Bangunan (HGB) and Hak Pakai rights. Meanwhile, joint ventures may also be granted Hak Guna Usaha (HGU) rights, as stipulated in Presidential Decree No. 34 of 1992.
2. From a constitutional perspective, the government is granted authority to issue Government Regulation No. 18 of 2021. From a legal standpoint, this regulation aligns with the provisions set forth in the Basic Agrarian Law (UUPA), ensuring legal certainty. However, in practice, this regulation has proven to be ineffective, as it merely provides opportunities for foreign investors to acquire land in Indonesia upon fulfilling certain conditions related to FDI. The current government policy required to regulate foreign land ownership in Indonesia should focus on the proper implementation of existing regulations and their enforcement. This includes the issuance of necessary implementing regulations for previously established laws to ensure the effective execution of legal provisions. The ultimate legal objectives should be met, including the assurance of legal certainty, fairness within society, a balanced approach between private, public, and governmental interests, and the overall benefit derived from foreign investment. These aspects, particularly in the land sector, contribute to the attractiveness of Indonesia as an investment destination, particularly concerning land ownership rights for foreign investors.

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