
CLIENT UPDATE

22 APRIL 2016

REAL PROPERTY

Land Ministry Clarifies Rules on Property Ownership by Non-Indonesians

1. Introduction

The Minister of Agrarian and Spatial Planning Affairs has issued a regulation (the “**New Regulation**”)ⁱ to further clarify the rules governing the ownership of real property by non-Indonesians, as set out in Government Regulation No. 103 of 2015ⁱⁱ (“**Reg. 103/2015**”) (for a full discussion of Reg. 103/2015 and land titles in Indonesia, see AHP Client Update of 20 January 2016, <http://www.ahp.co.id/client-update-20-january-2016>). The New Regulation, which was issued on 21 March 2016, reiterates the restrictions contained in Reg. 103/2015, and in addition sets minimum price thresholds that must be satisfied before a non-Indonesian may purchase a property. On a somewhat more positive note, it stresses that Hak Pakai (Right to Use)ⁱⁱⁱ property may be pledged as collateral.

2. Tight Restrictions

In accordance with Reg. 103/2015, the New Regulation provides that non-Indonesians may only purchase/own dwelling houses or apartments constructed on Hak Pakai land. Further, such houses or apartments must be new and must be purchased directly from the developer or land owner, rather than on the secondary market.

In addition, the New Regulation sets out minimum price thresholds (which vary from one part of the country to another) that must be satisfied before a non-Indonesian may acquire a dwelling house or apartment (see tables 1 and 2 below). While there is nothing in the New Regulation that expressly states whether these price thresholds are based on taxable value (NJOP) or market value, we believe it is most likely to be market value.

As stipulated in Reg. 103/2015, the right to own a dwelling house or apartment is granted only to non-Indonesians who are lawfully resident in Indonesia, which we believe means holding a valid residency permit. Similarly, the right to inherit such property is also dependent on residency. Thus, in a situation where Mr. A, an Indonesian-resident British national who owns a property in Jakarta, has only one heir who is not a resident of Indonesia, the heir will be prohibited from inheriting Mr. A’s Jakarta property. The New Regulation makes it clear that the question of whether or not an individual is lawfully resident in Indonesia will have regard to the opinion of the Ministry of Law and Human Rights.

In circumstances where the property owner is no longer resident in Indonesia, or his/her heir is not an Indonesian resident, the property must be assigned within one year to a party that is entitled to own it. Should this not happen, then the property will (i) be auctioned by the state (in a situation where the Hak Pakai has been issued over state land), or (ii) revert to the ultimate land owner or title holder (where the Hak Pakai has been issued over Hak Milik (freehold) land or Hak Pengelolaan land).

3. New Regulation Expands Hak Pakai Categories

Under Reg. 103/2015, non-Indonesians are entitled to own homes or apartments based on Hak Pakai granted over (a) state land; and (b) Hak Milik land. By contrast, the New Regulation includes an additional category, namely, Hak Pakai granted over Hak Pengelolaan (Management Right) land. Hak Pengelolaan may be granted over state land by the government to a:

- a. local government;
- b. state enterprise;
- c. local-government enterprise;

CLIENT UPDATE

22 APRIL 2016

REAL PROPERTY

- d. partially privatized state enterprise;
- e. governmental authority;
- f. other governmental entity, as designated by the government.

4. Hak Pakai Property as Collateral

The New Regulation provides that a non-Indonesian's ownership of a dwelling house or apartment constructed on Hak Pakai land may be pledged as collateral for a loan by means of a real-estate hypothec (*Hak Tanggungan*, the Indonesian equivalent of the common-law mortgage). However, it also stipulates that any such pledge is subject to the consent of the owner of the Hak Milik or Hak Pengelolaan, where the Hak Pakai has been issued over Hak Milik or Hak Pengelolaan land. Despite this restriction, the ability to pledge Hak Pakai land as collateral would at first sight appear to be a step forward as one of the principal difficulties regarding Hak Pakai in the past was that it could not be used as collateral. However, given the other weaknesses inherent in Hak Pakai, whether such titles will be acceptable as collateral to the banking sector remains to be seen.

5. One Step Forward, Two Back?

Prior to the issuance of Reg. 103/2015 (the head regulation under which the New Regulation has been issued), the question of real property rights for non-Indonesians was governed by Minister of Agrarian Affairs Regulation No. 7 of 1996, as amended by Minister of Agrarian Affairs Regulation No. 8 of 1996 (the "**Previous Regulations**"). In a number of respects, Reg. 103/2015 and the New Regulation actually represent a step backwards for those hoping for a more liberal regime. The principal retrograde changes are as follows:

- (i) The Previous Regulations did not require non-Indonesians to hold residency permits in order to own real property. It was sufficient if their presence "benefits national development," which is defined as "having and maintaining an economic interest in Indonesia by investing for the purpose of owning a dwelling or residence in Indonesia."
- (ii) There was no requirement under the Previous Regulations for a non-Indonesian to purchase their prospective home directly from the developer or land owner. By contrast, the New Regulation prohibits non-Indonesians from purchasing a home on the secondary market. Further, the Previous Regulations permitted a non-Indonesian to build their own home.
- (iii) The Previous Regulations stopped short of setting specific price thresholds for property ownership by non-Indonesians. Rather, foreigners were merely prohibited from purchasing homes classified as "modest" (*sederhana*) or "very modest" (*sangat sederhana*), both of which categories currently sell for well below the thresholds stipulated in the New Regulation.

6. AHP Commentary

While the General Elucidation on Reg. 103/2015 speaks about the "facilitation" of property ownership by non-Indonesians, the reality is that neither Reg. 103/2015 nor the New Regulation do much in the way of "facilitating." This should, of course, come as no surprise given the tight restrictions imposed by the Agrarian Law (No. 5 of 1960) on property ownership by non-Indonesians, as explained in our Client Update of 20 January 2016.

But besides this, Reg. 103/2015 and the New Regulation appear in some ways to be removed from reality. Firstly, the high thresholds imposed by the New Regulation are likely to deter many foreigners resident in Indonesia from purchasing real property here, especially given that they can only acquire a relatively weak title.

Secondly, the actual situation on the ground is that it is difficult to find apartment complexes and residential homes that are constructed on Hak Pakai land. Thus, even if a foreigner is willing to pay Rp 10 billion for a dwelling house or Rp 5 billion for an apartment in Jakarta, he or she is going to find it difficult to identify a suitable property.

CLIENT UPDATE

22 APRIL 2016

REAL PROPERTY

Table 1

Minimum Price Thresholds for Ownership of Dwelling House by Non-Indonesian

No.	Location	Minimum Price (Rupiah)
1	Jakarta Special Capital Province	10 billion
2	Banten	5 billion
3	West Java	5 billion
4	Central Java	3 billion
5	Yogyakarta	3 billion
6	East Java	5 billion
7	Bali	3 billion
8	West Nusa Tenggara	2 billion
9	North Sumatra	2 billion
10	East Kalimantan	2 billion
11	South Sulawesi	2 billion
12	Other Areas	1 billion

Table 2

Minimum Price Thresholds for Ownership of Apartment by Non-Indonesian

No.	Location	Minimum Price (Rupiah)
1	Jakarta Special Capital Province	5 billion
2	Banten	1 billion
3	West Java	1 billion
4	Central Java	1 billion
5	Yogyakarta	1 billion
6	East Java	1.5 billion
7	Bali	2 billion
8	West Nusa Tenggara	1 billion
9	North Sumatra	1 billion
10	East Kalimantan	1 billion
11	South Sulawesi	1 billion
12	Other Areas	750 million

¹ Minister of Agrarian and Spatial Planning Affairs / Head of the National Land Agency Regulation No. 13 of 2016 on Procedures for the Granting, Relinquishment and Assignment of Ownership Rights over Residential Homes or Housing by Foreigners Resident in Indonesia (*Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 13 Tahun 2016 tentang Tata Cara Pemberian, Pelepasan atau Pengalihan Hak Atas Pemilikan Rumah Tempat Tinggal atau Hunian Oleh Orang Asing Yang Berkedudukan di Indonesia*).

² Government Regulation No. 103 of 2015 on the Ownership of Residential Homes or Housing by Foreign Citizens Resident in Indonesia (*Peraturan Pemerintah Nomor 103 Tahun 2015 tentang Pemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berkedudukan Di Indonesia*).

³ Hak Pakai (Right to Use) - confers the right to use land and/or harvest produce on it. It may be held by Indonesian citizens, foreign citizens resident in Indonesia, Indonesian legal entities and foreign legal entities with representative offices in Indonesia. It is the strongest title that a non-Indonesian may acquire.

CLIENT UPDATE

22 APRIL 2016

REAL PROPERTY

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ASEAN Economic Community Portal

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By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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