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Regulation of Multi-storey Residential Ownership by Foreign Nationals in Indonesia and Malaysia: A Legal Perspective and Islamic Principles

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Abstract

This study analyzes the regulation of multi-storey residential ownership by foreign nationals (WNA) in Indonesia and Malaysia from the perspective of Islamic law and principles. The issue requires clear and fair arrangements to protect national interests and local residents' rights. Both countries, with majority Muslim populations, integrate Islamic principles into public policy, including property. Using a comparative study and qualitative analysis, the research examines Indonesia's Government Regulation No. 103 of 2015 and Malaysia's "Malaysia My Second Home" (MM2H) program and strata title regulations. Findings reveal that both countries emphasize social justice and the protection of local citizens' rights in line with Islamic principles. The study concludes that regulations should be refined with Islamic principles to attract foreign investment and protect national interests, focusing on simplifying bureaucracy, increasing transparency, and reviewing property price policies.

Keywords: Multi-Storey Residential Ownership, Regulation, Social Justice, Foreign Investment.

INTRODUCTION

The principle of nationality in the State Law of the Republic of Indonesia Number 5 of 1960 concerning Agrarian Principles (UUPA) prioritizes national interests above all else, including in terms of land ownership and agrarian resources. Article 21 of the UUPA states that land ownership rights are only for Indonesian citizens and legal entities determined by the government, while building use rights and use rights can be owned by Indonesian citizens, Indonesian legal entities, and foreigners domiciled in Indonesia(Hidayanti et al., 2021).

The need for housing as a basic human need is regulated in the Covenant on Economic, Social and Cultural Rights, which states that everyone has the right to housing without discrimination. Globalization and free trade have led to an increase in foreign investment, including in the property sector in Indonesia. This is regulated in various laws and regulations, such as Government Regulation No. 41 of 1996 and Law No. 1/2011 on Housing and Residential Areas, which regulates property ownership by foreign nationals with certain terms and conditions(Muryani, 2021).

Home ownership by foreign nationals in Indonesia faces challenges, including legal certainty and bureaucratic barriers. The government's efforts to attract foreign investment in the property sector include deregulation and revision of the law, such as through Law No. 11/2020 on Job Creation which grants ownership of flats to foreign nationals on the condition of appropriate immigration documents. Nonetheless, the issue of property ownership by foreign nationals still needs to be further resolved to create legal certainty and attract foreign investment in Indonesia(Abdullah et al., 2022).

In the era of globalization, high international mobility encourages many foreign nationals (WNA) to seek housing in various countries, including Indonesia and Malaysia. Ownership of multi-storey housing by foreigners is an important issue that requires clear and fair arrangements to protect national interests and the rights of local residents. Both countries, with a majority Muslim population, often apply Islamic principles in public policy, including in the area of property(Sumanto, 2021).

Property ownership by foreigners can provide significant economic benefits, such as increased foreign

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investment, stimulation of the property sector, and additional revenue for the government through taxes and levies. However, without proper regulation, there can be negative impacts such as uncontrolled increases in property prices, which reduce local residents' access to affordable housing(Dawson, 2019).

In Indonesia, the ownership of multi-storey dwellings by foreigners is regulated by Government Regulation No. 103 of 2015 concerning Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia(Wambar et al., 2015) This regulation aims to provide legal certainty for foreigners, while protecting the rights of local residents. In Malaysia, the "Malaysia My Second Home" (MM2H) (Mark Damsgaard, n.d.) program and strata title regulations provide a clear legal framework for foreigners who want to own property. As countries with a majority Muslim population, Indonesia and Malaysia often integrate Islamic principles into public policy. Principles such as social justice, transparency, and social welfare are important foundations in property ownership regulation. The implementation of these values helps to ensure that existing regulations are not only fair to foreigners, but also protect the rights and well-being of local residents (Adinugraha et al., 2023).

Although there are regulations governing the ownership of multi-storey dwellings by foreigners, both countries face challenges in their implementation. In Indonesia, the main challenges include complicated bureaucracy and the complexity of the legality of ownership by foreigners. In Malaysia, the issue of the minimum price of property that can be purchased by foreigners is a challenge, even though it aims to protect local residents (Thio, 2010) The objectives of this study are to Analyze regulations and policies related to multistorey residential ownership by foreigners in Indonesia and Malaysia. Examine the implementation and challenges faced in the implementation of the regulation. Provide policy recommendations to improve and refine the regulation of multi-storey residential ownership by foreigners in both countries, taking into account Islamic principles to achieve a balance between attracting foreign investment and protecting national interests(Budiono & Masing, 2022).

This research is expected to provide comprehensive insights into the regulation of multi-storey residential ownership by foreigners in Indonesia and Malaysia, as well as how Islamic principles can be integrated into these policies. The results of this research are also expected to contribute to the formation of more effective and efficient policies in regulating property ownership by foreigners, so that they can provide maximum benefits for the economy and social welfare in both countries. The problem of this paper is formulated into the question "Regulations on Ownership of Multi-Storey Residential Houses by Foreigners in Indonesia and Malaysia Based on Islamic Law?; What are the procedures for granting usage rights to foreigners according to the laws in force in Indonesia and Malaysia based on Islamic law; and What is the Future Construction of Islamic Law in the Arrangement of Multi-Storey Residential Ownership by Foreign Citizens in Indonesia and Malaysia?". This research uses a doctrinal approach (doctrinal research method) which analyzes these two laws as written in books and decided by judges through the judicial process. The data used is secondary data from cases that occurred in Malaysia compared to cases that occurred in Indonesia. Data were analyzed using qualitative descriptive methods.

RESULTS AND DISCUSSION

Regulation of Ownership of Multi-storey Residential Houses by Foreign Nationals in Indonesia and Malaysia Based on Islamic Law

Indonesia (civil law) and Malaysia (common law) have different views and policies on residential ownership by foreign nationals (WNA).

Indonesia(Adjie, 2023)

Regulations Related to Ownership by Foreigners

Law Number 11 of 2020 concerning Job Creation and Regulation of the Minister of ATR/BPN Number 18 of 2021 stipulate that foreigners can own landed houses on land with state use rights or property rights, as well as flats on building use rights.

Foreigners can own apartments or condominiums built on land with the right to use state land, but not on

Regulation of Multi-storey Residential Ownership by Foreign Nationals in Indonesia and Malaysia: A Legal Perspective and Islamic Principles land with property rights or other building use rights.

Developments and Policies

This policy changes according to the needs of the government and the market to increase economic growth. Hope to attract foreign investment through the Job Creation Law and related regulations.

Malaysia

Different Ownership Regulations

Malaysia grants title to land to foreigners, except for certain types of land that are protected.

The policy is looser than Indonesia's, creating a significant difference in the property rights granted.

Key Comparison

Indonesia: Focus on protecting sovereignty and restricting ownership with the status of use rights and lease rights for foreigners.

Malaysia: Granting land ownership to foreigners, shows fundamental differences in land ownership policies (Daroini & Lukman, 2022).

Regulations in Indonesia are designed to safeguard sovereignty and prevent covert foreign domination, while Malaysia tends to be more flexible in granting property rights to foreigners. Regulation in Indonesia, Government Regulation No. 103 of 2015: Regulating the ownership of multi-storey residential houses by foreigners in Indonesia. Foreigners can have land rights in the form of Right to Use for a certain period of time. Restrictions and Conditions: Ownership is only allowed for certain residences and at a minimum price set by the government. In addition, there is a limit to the term of ownership that can be extended. Implementation: The main challenge is the complicated bureaucracy and lack of transparency in the administrative process. This makes it difficult for foreigners to obtain legal and clear ownership rights (Salain et al., 2022).

Meanwhile, Regulation in Malaysia, Malaysia My Second Home (MM2H): This program offers long-term residence permits for foreigners who meet certain conditions, including owning a property in Malaysia. Foreigners can own strata title property, which provides legal certainty over property rights. Restrictions and Conditions: There is a minimum price requirement for properties that can be purchased by foreigners to ensure that locals can still access affordable housing. Implementation: The program is relatively clearer and more transparent compared to Indonesia, but challenges remain related to the minimum price which is sometimes considered too high for some investors(Transnational Behaviour Among Malaysia My Second, 2020).

Conformity with Islamic Principles

Social Justice: Both countries strive to apply the principles of social justice by ensuring that regulations do not harm local citizens. In Indonesia, minimum prices and restrictions on housing types aim to protect local people's access to property. In Malaysia, the minimum price requirement for properties also serves to maintain a balance between attracting foreign investment and protecting the rights of local residents.

Transparency and Openness: The principle of transparency is an important part of Islam to prevent fraud and injustice. Malaysia tends to be more transparent in policy implementation compared to Indonesia. The complicated bureaucratic process in Indonesia is often a barrier to achieving the desired transparency.

Social Welfare: Both countries integrate social welfare principles in their regulations. Despite challenges, such as minimum property prices in Malaysia and bureaucracy in Indonesia, existing regulations show an effort to maintain a balance between national interests and the rights of local residents (Mukrimin, 2023).

Challenges and Recommendations

Indonesia

Bureaucracy: It is necessary to simplify the bureaucratic process and increase transparency to make it easier for foreigners to obtain ownership rights. Legality Complexity: There needs to be clearer guidance and adequate legal assistance to overcome the complexity of the legality of ownership by foreigners.

Malaysia

Minimum Price of Property: The minimum price policy needs to be reviewed to ensure it remains attractive to foreign investors but also does not burden them. At the same time, protection for local residents must remain a priority. Implementation Supervision: Supervision of the implementation of regulations needs to be increased to ensure that all processes are carried out in accordance with the principles of fairness and transparency(Labolo, 2016).

Regulations on multi-storey housing ownership by foreigners in Indonesia and Malaysia show conformity with Islamic principles such as social justice, transparency, and social welfare. However, there are still challenges in implementation that need to be overcome to strike a balance between attracting foreign investment and protecting national interests and the rights of local citizens. With improvements in bureaucracy, transparency, and property pricing policies, both countries can optimize the benefits of such regulations in accordance with Islamic principles(DinarStandard, 2020).

Procedures for granting the right of use to foreigners according to Laws Applicable in Indonesia and Malaysia Based on Islamic Law

Even though it has been regulated in the Job Creation Law (UUCK) and its implementing regulations, the process of owning multi-storey residential houses by Foreign Citizens (WNA) in Indonesia still faces several obstacles(GOOD, 2015):

BPHTB Payment Validation Requirements

The local government requires foreigners as Foreign Tax Subjects (SPLN) to have a Taxpayer Participant Number (NPWP), even though there has been a letter from the Director General of Taxes stating that SPLN foreigners only need to provide a passport number to report their taxes.

This requirement complicates the administrative process and causes uncertainty for foreigners in conducting property transactions in Indonesia. This can be an obstacle in practice even though it is clearly regulated by law.

Land Management Rights Holders (HPL)

Some HPL holders are not yet willing to provide transaction recommendations for foreigners, even though Ministerial Regulation No. 18 of 2021 should facilitate transactions for foreigners clearly (Articles 13 and 71).

This unwillingness can hinder the property acquisition process by foreigners, especially if the HPL holder does not follow the officially regulated conditions. This creates legal uncertainty and an obstacle to property investment by foreigners in Indonesia.

Administrative on BPHTB Payment Validation

The discrepancy between central policies and their implementation at the local level shows that there are problems with coordination and communication between government agencies. Local governments may be less informed or have not adopted policy changes that have been set by the central government.

More intensive socialization and harmonization of procedures between central and local governments is needed. Uniform policy implementation will reduce excessive bureaucracy and speed up the administrative process.

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Transaction Recommendations from HPL Holders

The refusal of HPL holders to provide transaction recommendations for foreigners may be due to ignorance or concern about the impact of foreign ownership on land management.

The government needs to hold a dialogue with HPL holders to provide a better understanding of the provisions in Ministerial Regulation No. 18 of 2021. Additionally, stricter enforcement of these provisions can help ensure compliance.

Implication

Increase Legal Certainty

To attract more foreign investment in the property sector, Indonesia needs to increase legal certainty for foreigners who want to own property. This includes ensuring that all parties involved understand and comply with applicable regulations.

Improving Coordination Between Agencies

Not all HPL holders are willing to provide transaction recommendations to foreigners, even though regulations already allow this. This shows the need for further socialization and approaches to ensure that the implementation of regulations runs smoothly and in accordance with policy objectives It is necessary to improve coordination between the central and regional governments as well as between the government and HPL holders. Good coordination will reduce administrative barriers and ensure consistent policy implementation.

Socialization and Education

The government needs to conduct intensive socialization and education to all relevant parties regarding the latest provisions in the UUCK and its implementing regulations. This will help clear up misunderstandings and ensure that all parties understand their rights and obligations. And further efforts are needed in socializing regulations to local governments, HPL holders, and other related parties to ensure the same understanding and suitability in implementation. If there are discrepancies in interpretation or administrative obstacles such as NPWP requirements, further revision or clarification from the relevant authorities is needed to ensure clarity and uniformity in the implementation of regulations.

Tax Policy

The local government maintains the NPWP requirement for SPLN foreigners even though there is a provision that a passport number is sufficient. These differences indicate that there are different interpretations in implementing regulations, which can hinder legal clarity and certainty (Ali et al., 2019) (Taduri, 2021).

Although Indonesia already has regulations that allow foreigners to own multi-storey residential houses, there are still obstacles in practice. Issues related to tax requirements and cooperation with HPL holders are the main challenges that need to be overcome to increase legal certainty and support property investment by foreigners in Indonesia. The process of owning multi-storey residential houses by foreigners in Indonesia still faces administrative and coordination constraints, even though existing regulations are already supportive. Problems related to the validation of BPHTB payments and transaction recommendations from HPL holders need to be addressed immediately through increased coordination, socialization, and law enforcement. With intensive socialization measures and effective coordination between institutions, it can help overcome these obstacles to achieve the goals of the policies that have been set; This step is expected to make the process of property ownership by foreigners run more smoothly, increase foreign investment in Indonesia, and support national economic growth(Christopher Bennett, Muhammad Ridwansyah, Mia Siscawati, 2019).

Legal Construction in Islam in the Future in Regulating the Ownership of Multi-storey Residential Houses by Foreign Nationals in Indonesia and Malaysia

The ownership of multi-storey residential houses by foreign nationals (WNA) in Indonesia and Malaysia faces unique challenges. Legal construction in Islam can provide useful guidance in formulating a fair and effective

future policy. Islamic law (Sharia) emphasizes the principles of justice, benefit, and protection from exploitation. In the context of property ownership by foreigners, several important principles can be considered(Muhammadi et al., 2021):

Property Rights (Al-Milk)

Islam recognizes individual ownership of property, but it also emphasizes that ownership must be used for good and not to harm others.

Prohibition of Riba and Gharar

Property transactions must be free from riba (excessive interest) and gharar (uncertainty) to ensure fairness and transparency.

Justice and Benefit

Policies must ensure that property ownership by foreigners does not cause injustice or harm local communities. The public benefit must be prioritized.

Comparison of laws between Indonesia and Malaysia, namely(Daroini & Lukman, 2022):

Indonesia >

Current Legal Construction

Property ownership by foreigners is regulated by the status of Right to Use and Right to Lease. These regulations are designed to protect sovereignty and prevent land exploitation by foreign parties.

Obstacles and Challenges

Validation of tax payments (BPHTB) and recommendations from Land Management Rights (HPL) holders are still obstacles.

The Construction of Future Law in Islam

Principles of Fairness: Ensuring fair policies for foreigners and local communities, perhaps through regulatory reforms to harmonize tax procedures and property validation.

Strict Supervision: Implement strict supervision to ensure that the right to use and lease is not misused and in accordance with the principles of justice and benefit.

Malaysia →

Current Legal Construction

Malaysia is more flexible by granting title rights to foreigners, except for certain types of land that are protected.

Obstacles and Challenges

Despite being more flexible, Malaysia still faces challenges in ensuring that foreign ownership does not harm local communities.

The Construction of Future Law in Islam

Principle of Benefit: Policies should prioritize benefits for the wider community, such as using property to improve the local economy without harming citizens.

Transparency and Accountability: Increase transparency in the process of property ownership by foreigners and ensure that all transactions comply with Islamic law.

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Comparison

Protective vs Flexible Approach

Indonesia is more protective, limiting foreigners' ownership with the right to use and lease rights to protect sovereignty.

Malaysia is more flexible, allowing land ownership by foreigners with some restrictions.

Implementation of Islamic Law

Both countries can improve alignment with Islamic legal principles such as justice, benefit, and protection from exploitation.

Future Recommendations

Indonesia needs increased coordination between agencies and better regulatory socialization to overcome administrative constraints.

Malaysia must ensure that flexible policies still safeguard the interests of local communities and avoid injustice.

Therefore, future legal constructions in regulating the ownership of multi-storey residential houses by foreigners in Indonesia and Malaysia must consider Islamic legal principles, such as justice, benefit, and protection from exploitation. With this approach, it is hoped that fairer and more effective policies can be implemented, which not only attract foreign investment but also protect the interests of local communities and safeguard the country's sovereignty (Widiyono & Khan, 2023).

CONCLUSION

Regulations on the ownership of multi-storey residential houses by foreign nationals (WNA) in Indonesia and Malaysia are regulated by the national regulations of each country and are considered within the framework of Islamic legal principles(Au-Yong et al., 2023). The difference in approach between the two countries demonstrates a commitment to protecting national interests while attracting foreign investment. The policy of multi-storey residential house ownership by foreigners in Indonesia and Malaysia, viewed from the perspective of law and Islamic legal principles, emphasizes the importance of justice, benefit, and protection from exploitation(Sudiro, 2018). By adopting an approach that is in line with Islamic law, the two countries can create policies that not only attract foreign investment but also protect the interests of local communities and safeguard the country's sovereignty. Measures such as improved coordination, transparency, and law enforcement will be key in the implementation of fair and effective policies in the future(Murphy, 2011).

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