

NEWSLETTER

By : Deska Legira, SH, M.Kn

PROPERTY OWNERSHIP OF LAND BY FOREIGN CITIZEN

On 28th December 2015 the Government has issued regulation No. 103 of 2015 on the Ownership of Residential Property by Foreigner Domiciled in Indonesia ("2015 Regulation"). This regulation has replaced the Government Regulation No. 41 of 1996 concerning the same matter ("Previous Regulation"). The Consideration of 2015 Regulation explains that this regulation is enacted in order to provide a legal certainty regarding the property ownership by Foreigner.

The highlight points of 2015 Regulation are as follows:

1. The definition of foreigner who can own the property ownership

In the Article 1 Point 1 of 2015 Regulation, a Foreigner is a non Indonesian citizen whose existence brings benefit, doing business, working, or doing investment in Indonesia.

Article 2 point 2 explains that such foreigner shall hold stay permit in Indonesia in accordance to the prevailing laws.

2. The specific type of house for foreign ownership

Article 4 point 1 mentions that the type of house that can be owned by a Foreigner shall be i.) single house on a land (on a right to use land or right to use upon the right to own which is occupied based on an agreement granting of right to use upon the right to own agreement land); ii.) apartment which is built upon the land of right to use.

3. The number of property

The Previous Regulation stipulates that a Foreigner domiciled in Indonesia may only have one house for housing or house with certain rights of land. Meanwhile, the 2015 Regulation does not regulate regarding the number of property that can be owned by foreigner.

4. Land title for foreigner

Type of Property	Land Title to Build the Property	Period
Houses	Land designated with a right to use title	30 Years, subject to a 20-year extension and renewal for another 30 years
Apartment Unit	Land Designated with right to use title	Not regulated

5. Transfer of Rights

A foreigner who has a property in Indonesia may transfer its property, the 2015 Regulation regulates is as follows:

- a. Due to inheritance;

Based on Article 2 point 3 of 2015 Regulation, in the event that a Foreigner who has property passes away, such Foreigner's house may be inherited. If such Foreigner's heir is also a foreigner, such heir shall have the stay permit as regulated in the prevailing law.

The provision on property inheritance was not regulated under Previous Regulation.

- b. Due to the foreigner is no longer hold a stay permit in Indonesia

Furthermore, the Article 10 of the 2015 Regulation also mandates that a foreigner must relinquish his/her land and property title to an eligible party if they or their heirs are no longer living in Indonesia.

This release or transfer must be undertaken within one year (maximum), otherwise the following measures will be imposed:

- i. For a house built on land designated with a right to use title, the house will be auctioned by the state and the auction proceed will be transferred to the former house owner; or
- ii. For a house built on land designated with a right to use title that derives from a freehold title, the house will be given to the freehold land owner.

6. The property ownership by a foreigners' spouse

Article 3 of 2015 Regulation stipulates that an Indonesian Citizen, who marries a foreigner, is allowed to own land as any other Indonesian Citizens. The land title will not be considered as joint asset as proven by a prenuptial agreement between husband and wife that is made in a notarial deed.

This provision was also not regulated under the Previous Regulation.

The 2015 Regulation prevails over and replaces the previous regulation and has been in force since 28 Desember 2015.