

Transfer of Land Ownership and Marginalization as Impact of Tourism Industry

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Abstract: Tourism has emerged as one of the foremost industries experiencing rapid growth. Over the past few decades, the sector has witnessed continuous development in Indonesia, evident from the increasing number of foreign tourist arrivals. The rapid growth of tourism in various regions has undeniably yielded positive impacts on both investment and the overall economy. However, it has also given rise to a multitude of challenges that need to be addressed. One of the challenges pertains to the issue of land ownership, specifically concerning the acquisition of residents' lands surrounding tourist destinations by foreign individuals, which is strictly prohibited under Indonesian law. Therefore, a comparative analysis between Indonesia and Malaysia is needed to identify regulation problems to potentially increase cases of legal smuggling of foreign land ownership transfers. This study explains the practice of land ownership by foreigners in the Pesisir Barat District of Lampung, along with the associated problems analyzed through a socio-legal approach. The results show that tourism undeniably benefits the economic sector, and resulted in legal infringements concerning land ownership, leading to the marginalization and displacement of local communities. This study adopts a comparative law method, elucidating the respective provisions of both Indonesia and Malaysia, supplemented by a normative juridical approach to examine legal principles, regulations, and systematics through the examination of relevant library materials. Consequently, it is essential to enhance the regulations surrounding the transfer of land to foreigners, including Foreign Citizens and Foreign Legal Entities with representatives in Indonesia, emulating the stringent land tenure restrictions imposed by Malaysia on foreign nationals.

Keywords: Comparative; Foreigners; Land; Marginalized; Tourism

1. Introduction

Tourism is one of the largest industries developed rapidly during the last decades. The industry in Southeast Asia, including Indonesia, has significant development marked by increased foreign tourist visits. Undeniably, the allure of Indonesian natural landscapes and rich cultural heritage constitutes a crucial element of tourism industry. Indonesia tourism also shows development specifically seen from the increase of foreigners visiting different destinations. This seriousness is seen by the signing of Presidential Regulation Number 21 on Free Passport Visits around 169 countries for 30 days in March 2016, and it puts the sector as one of the important economic sectors.¹

¹ Yudhistira, Muhammad Halley, Yusuf Sofiyandi, Witri Indriyani, and Andhika Putra Pratama. "Heterogeneous effects of visa exemption policy on international tourist arrivals: Evidence from Indonesia." *Tourism Economics* 27, no. 4 (2021): 703-720.

According to Gursoy and Kendall, residents are more likely to engage in tourism activities when they perceive significant benefits without having to make excessive sacrifices.² Residents are inclined to support tourism development in their area when the positive impacts outweigh the negative ones. However, they are likely to develop opposition to these developments when the associated losses, such as cultural degradation and environmental damage, outweigh the potential benefits.³ Foreign tourists impact a region's economy, marked by the development of culinary efforts, souvenirs, the growth of travel and tourism agents, and the development of hostelry businesses in almost every tourist destination.⁴

Lampung Province also tries to develop its tourism sector by holding different festival activities.⁵ The records of visitors demonstrate a yearly increase, according to the data from the Ministry of Tourism and PT Telkom. The province attracts a larger number of domestic tourists compared to the number of visitors to Bali. The Ministry of Tourism and PT Telkom obtains this data by using the traffic movement technique, which analyzes tourist patterns through cellular phones.⁶

One notable destination is the beach located on Pesisir Barat, Lampung, which captivates foreign tourists who have a passion for surfing. The Krui area remains unoccupied, primarily attracting surfers as the main reason for their visits. Additionally, it is recognized as one of the preferred destinations among surfers, having hosted international competitions in the past.⁷ Pesisir Barat Tourism Office stated that until the end of September 2018, foreign tourist arrivals on Pesisir Barat had reached 110.00 people. This number increased sharply from the previous year in 2017 when the number of tourists visits only 15,000 people.⁸

The development of the tourism industry also attracts residents and foreigners. Foreign individuals have shown a growing interest in monitoring the advancements in tourism and have attempted to acquire properties by using the names of others.⁹ However, it is

² Balduck, Anne-Line, Marc Maes, and Marc Buelens. "The social impact of the Tour de France: Comparisons of residents' pre-and post-event perceptions." *European Sport Management Quarterly* 11, no. 2 (2011): 91-113.

³ Astriani, Nadia, Andri Gunawan Wibisana, Anindrya Nastiti, An Nissa Ayu Mutia, and Hajriyanti Nuraini. "Identifying the Use of Smart Enforcement in Citarum River Environmental Law Enforcement." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 10, no. 1 (2023): 36-58.

⁴ Indonesia Investment, "Industri Pariwisata Indonesia," *Indonesia Investment*, 2016, <https://www.indonesia-investments.com/id/bisnis/industri-sektor/pariwisata/item6051?>

⁵ Mangku, Dewa Gede Sudika, Ni Putu Rai Yulianti, Ruslan Ruslan, Seguito Menteiro, and Dahlan Surat. "The Position of Indegenous People in the Culture and Tourism Developments: Comparing Indonesia and East Timor Tourism Laws and Policies." *JILS (Journal of Indonesian Legal Studies)*, 7 no. 1 (2022): 57-100.

⁶ Urip Santoso, *Hukum Agraria Hak-Hak Atas Tanah* (Bandung: Kencana, 2005), 44.

⁷ Maria S. Sumardjono, *Alternatif Kebijakan Pengaturan Hak Atas Tanah Beserta Bangunan Bagi Warga Negara Asing Dan Badan Hukum Asing* (Jakarta: Penerbit Buku Kompas, 2007), 60.

⁸ Srilaksmi, Ni Ketut Tri. "Perjanjian Nominee dalam Perjanjian Penguasaan Hak Milik Atas Tanah Perspektif Administrasi Negara." *Pariksa: Jurnal Hukum Agama Hindu* 6, no. 2 (2023): 91-100.

⁹ Permatadani, Ega, and Anang Dony Irawan. "Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia." *Khatulistiwa Law Review* 2, no. 2 (2021): 348-358.

important to note that Indonesian agrarian law strictly prohibits foreigners from owning land in the country.¹⁰ This prohibition is based on the principle of nationality, which prohibits foreigners from owning land. Article 1, paragraph (1) of the Agrarian Law stipulates that the entire territory is a unit of water from all the people of Indonesia, who are united as the Indonesian nation. The principle of nationality is also affirmed in Article 9, paragraph (1) of the Agrarian Basic Law based on the provisions of Articles 21, 26, and 27.

Foreigners are restricted from owning land through the Right to Use and Rent Buildings. However, it has been observed that foreign nationals frequently exploit legal loopholes to acquire land, one of which is through the use of a nominee agreement. The nominee agreement serves as a formal declaration of consent and authority, allowing foreigners to indirectly own land in the country. An Indonesian citizen asserts that the land does not belong to them and grants authorization to a foreigner to divert or sell the property. This arrangement is typically formalized through a letter of agreement legally binding the parties involved. In practice, the nominee agreement is employed by foreigners to gain control over the land by using the name of an Indonesian citizen through a nominee agreement, which is supported by an undisclosed or authenticated agreement between the Indonesian and foreign individuals.

The allure of the beach entices individuals to invest in real estate properties. Since more foreigners continue to arrive in Pesisir Barat, it fosters collaboration with hotels, inn, and cottage owners, who have traditionally catered to international tourists. Similar occurrences have been observed in several tourist destinations across Indonesia, including Pesisir Barat. Therefore, this study delves into the mechanisms behind these practices within Pesisir Barat and analyzes the legal issues from the employment of nominee agreements.¹¹

The legislation and regulations on land in Indonesia still exhibit several loopholes that foreigners exploit to acquire property through various means to gain control over land more expeditiously.¹² This preference arises from the fact that the existing laws and regulations governing land or building ownership necessitate a significantly lengthy process. However, foreigners typically seek a more practical approach. It becomes imperative to conduct a comprehensive comparative legal analysis of the regulations governing foreign land ownership transfers in both Indonesia and Malaysia to discern the underlying issues in detail.

¹⁰ Urip Santoso, *Perolehan Hak Atas Tanah* (Jakarta: Prenada Media, 2015), 5.

¹¹ Zainudin Hasan, S Endang, and Komang Widi Yane, "Criminal Liability Offender Forgery of Sporadic Land Certificates at Bandar Lampung National Land Agency," *Ius Poenale* 4, no. 1 (2023): 33–46.

¹² Pradipta Wijonugroho et al., "Dispute on Land Status in the Transmigration Village Area in and Around the Forest Area in Purwotani Village Lampung Selatan," *Cepalo* 7, no. 2 (2023): 89–102.

This study analyzes the issue of transferring land ownership from residents in tourist destinations to foreigners, particularly within the Tourism Industry area in Pesisir Barat Regency, Lampung. The novelty lies in the examination of legal loopholes used by foreigners to facilitate illicit land acquisitions. By conducting a comparative study with Malaysia, it identifies potential gaps in the legal framework, with the ultimate goal of promoting tourism growth in Indonesia. The results contribute to the discovery of legal insights and recommendations to address these challenges.

2. Method

This study used a socio-legal approach, which involved identifying only the text and delving into the contextual factors encompassing the entire legal process, from the formation of the law to its implementation. This approach combined a literature study of doctrine, legal principles, and legislation applicable in Indonesia. It was complemented by data gathered through interviews with resource persons and field observations conducted in Pesisir Barat Regency, Lampung Province. The term "socio-legal studies" encompassed a group of disciplines that applied a social scientific perspective, enabling a comprehensive exploration of a problem beyond the examination of relevant legal norms or doctrines. Moreover, this study employed a comparative law method by describing each provision of Indonesia and Malaysia, accompanied by a normative juridical approach to examine legal principles, rules, and legal systematics. This examination was carried out through an analysis of library materials, including books, journals, and other literature.

3. Transition Mode for Land Ownership: An Empirical Approach

The act of circumventing the prohibition on land ownership by foreigners has taken place through different means. In formal legal terms, it is not permissible for foreigners to own freehold land. However, a concerning practice has been observed in Pesisir Barat, where they acquire freehold land by using the name of an Indonesian citizen. To facilitate this, a debt and credit agreement is established, creating an illusion that the individual whose name is borrowed owes a debt to the foreigner, with the purchased land serving as collateral.

Foreign individuals intending to invest in Indonesia must adhere to the established procedures outlined in the country's legal framework.¹³ Engaging in the aforementioned shortcuts and legal smuggling fails to offer guarantees and legal certainty, as well as

¹³ Amalia, Prita, and M. Makmun. "Multinational Corporation's Investments made through its Subsidiary under The Latest Generation of Investment Treaties." *Indonesian Journal of International Law* 19, no. 1 (2021): 113-135.

exposes the foreign party to significant risks. After closer examination, this form of legal smuggling poses potential negative effects on the foreign investor.¹⁴

Further examination of the role of notaries or land conveyancing officers (PPAT) is crucial, particularly regarding the potential exploitation of authentic deeds by the involved parties, namely foreigners and Indonesian citizens lending their names to evade land ownership regulations.¹⁵ It is widely recognized that when a foreigner intends to acquire land in Pesisir Barat, the selected shortcut involves using the identity of an Indonesian citizen to register as the legal owner or holder of the land rights stated on the certificate. The notary then prepared other documents to guide the foreign national as the actual purchaser, namely a deed of Acknowledgment of Debt, a Power of Attorney to Sell, a deed of Sale and Purchase Agreement, and a Letter of Declaration.¹⁶

The Notarial agreements, from a juridical standpoint, do not contravene the rules. However, they covertly facilitate the transfer of property rights, constituting a legal deception. This study found nine ways/modes of avoidance from the provisions of Article 26 paragraph (2) of the Agrarian Basic law.¹⁷ According to the study of Sumarja in 2015, there were 11 inns in the form of villas/inns/hotels/cottages related to foreigners. Generally, foreigners open hostelry businesses by collaborating using guise/nominee or marrying Indonesian citizens. All documents, business permits, building permits, or land certificates are in the name of Indonesian citizens.¹⁸ The nominee agreement allows foreign nationals to have ownership rights to land prohibited by the UUPA by using the guise of buying and selling on behalf of Indonesian citizens. This phenomenon of legal smuggling arises due to the questionable validity of the nominee agreement, leading to uncertainty regarding the status of the land involved in the agreement.

The stringent restrictions and challenging requirements imposed by the government on Foreigners, prompt interested parties to acquire more land beyond the granted Right of Use. This pursuit attains greater freedom in using the land, recognizing that property rights are considered the most superior, robust, and inheritable rights.¹⁹ Ownership of villas, hotels, or cottages by foreigners in the means of land and buildings purchased

¹⁴ Putri, Luh Putu Yeyen Karista, Miriam Imarhiagbe, I. Made Chandra Mandira, Eric Gordon Withnall, and Putu Yasodhara Sthita Brahmani Duarsa. "Comparative Analysis of Indonesia's Minimum Capital Requirements for Foreign Direct Investment." *Lex Scientia Law Review* 7, no. 1 (2023): 179-214.

¹⁵ Putri Nurmala Sari Siahaan, "Elements Testings Distortion of the Abuse of Authority Based on the Government Administration Law and Corruption Crime," *Corruptio* 2, no. 1 (2021): 45-60.

¹⁶ Arif Firmansyah and Lina Jamilah, "The Concept of Good Faith in Complete Systemic Land Registration in Realizing Legal Guarantee," *Administrative and Environmental Law Review* 3, no. 1 (2022).

¹⁷ Leonard, Tommy, and Niko Demus Simarmata. "Legal Dynamics of Land Digitalization In The Electronic Land Registration System." *Jurnal Hukum* 39, no. 1 (2023): 65-77.

¹⁸ F.X. Sumarja, *Hak Atas Tanah Bagi Orang Asing, Tinjauan Politik Hukum Dan Perlindungan Warga Negara Indonesia* (Yogyakarta: STPN Press dan Prodi DIV STPN, 2015), 162.

¹⁹ Yatani, Vincent G. "Refugee Protection in Multi-level Governance Regimes: A Case for Kenya and Indonesia." *Lampung Journal of International Law* 5, no. 1 (2023): 59-72.

and built on financial resources from foreigners. The purchase is executed privately, with only the buyer (an Indonesian citizen) possessing knowledge of the origin of the financial resources, while the seller is often unaware of this information.²⁰

It is not easy to uncover the sale and purchase of covert land, including the number of parcels of land or villas owned by foreigners, remembering that everything in the name of an Indonesian citizen is conducted by guise/nomination or by marrying Indonesian citizens. The acquisition of land owned by foreigners under the guise of marrying an Indonesian citizen is advised by lawyers, who collaborate with a notary.²¹ Relationships between foreigners and Indonesian citizens as the attorney (*nominee/trustee*) are created through a package agreement. This is difficult to prove since no land certificates or licensing documents have been found on behalf of foreign nationals in Pesisir Barat. Foreigners covertly marry Indonesian citizens and borrow names to obtain property rights to set up lodging. Foreigners or tourists visiting the Krui Coast, typically holding temporary residence permits, are unequivocally ineligible to hold land rights.²²

4. Transfer of Land Ownership and Marginalization

The negative impact caused by the development of the tourism industry is the change in land use due to the construction of hotels, restaurants, and various supporting infrastructures for tourism, slowly changing the function of the land.²³ Noting the ownership process of land owned by foreigners, the role of Indonesian citizens as a guise/nominee, lawyer, and notary is very dominant. On the other hand, the involvement of government officials remains elusive in these practices. These activities thrive due to the pragmatic mindset of landowners who prioritize short-term economic gains by selling their land to foreigners at inflated prices.²⁴

This phenomenon made the local government apparatus appeal to the people to refrain from selling land to foreigners. Head of Peratin Lintik, Krui Selatan District, Pesisir Barat Regency, Arifin, explained that foreign tourists were welcomed in the area.²⁵ The increasing presence of tourists opens opportunities for residents to earn income.

²⁰ Prasetyo, Yogi. "Local Autonomy As a Form of Constitutional Reform In Aspirational Governance." *Pancasila and Law Review* 2, no. 1 (2021): 49-60.

²¹ Widiatedja, I. Gusti Ngurah Parikesit, and I. Gusti Ngurah. "Foreign Direct Investment in Tourism and the Feasibility of Incorporating the United Nation Guiding Principles on Business and Human Rights in Indonesia." *Yuridika* 37, no. 2 (2022): 433-456.

²² Interview with Mr. GN, a lawyer in Bandar Lampung, on May 11, 2013. He explained to Rene that foreigners could not buy freehold land directly; if they wanted to, they had to borrow the name of an Indonesian citizen or marry an Indonesian citizen, then purchase the land in the name of an Indonesian citizen.

²³ Saputra, Rian, and Silaas Oghenemaro Emovwodo. "Indonesia as Legal Welfare State: The Policy of Indonesian National Economic Law." *Journal of Human Rights, Culture and Legal System* 2, no. 1 (2022): 1-13.

²⁴ Mangku, Dewa Gede Sudika, Ni Putu Rai Yulianti, and Ni Ketut Sari Adnyani. "Indigenous peoples' participation in the management of Balinese cultural tourism." *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (2021): 309-319.

²⁵ Interview with Peratin Way Walur, October 8, 2013

Additionally, an appeal was made to residents who own land along the beach to refrain from selling to foreign tourists due to the prevalent foreign ownership in the area. It is emphasized that citizens should avoid merely being passive witnesses to the success of these tourists. Government officials have confirmed instances of foreign ownership rights being "transferred" in Way Walur Village, Obyil Hayat, and Peratin Tanjungsetia, under the leadership of Iskandar Syah.²⁶

The expansion of capital in tourist areas has significant implications for the control of community lands, resulting in the loss of resources, including land, for the local population. This process contributes to the marginalization of communities residing in the vicinity of tourist areas. Agricultural activities and livestock breeding as the main mainstay had been lost because the land became the property of the capital owners. Individuals are deprived of their traditional livelihoods as farmers, ranchers, and fishermen. Simultaneously, in the realm of tourism management, it is imperative to grant the community access to participate, considering the rightful ownership of the land appropriated for tourism activities. The powerlessness of the community in adapting to structural changes can be seen from the following characteristics:

- a. The absence of alternatives to improve the quality of life and family welfare,
- b. The limitation of work productivity and economy in a state of subsistence level,
- c. Collective goals can no longer be formed and achieved, even though they are in communal form, and
- d. The longer the fatalistic tend to change and progress in the surrounding environment.²⁷

Sustainable tourism considers the present and future challenges confronting diverse tourism industries. By placing the community as the primary actor in the tourism business, the concept stimulates regional tourism development and enables the community to benefit more from its unique tourism assets.²⁸ One of the principles of sustainable tourism is local ownership, where tourism development must offer quality jobs for the local community. This community should develop and maintain tourism-supporting facilities such as hotels, and restaurants. Therefore, tourism can be a driving force in creating jobs, preserving culture, preserving the environment, and eliminating poverty.²⁹

²⁶ Interview with Peratin Tanjungsetia Mr. Iskandar Syah, on October 8, 2013.

²⁷ Sulaiman, King Faisal, and Iwan Satriawan. "Land Dispute Settlement Post Law No. 2 of 2012; Glagah Village Case Study Related to Nyia Airport." *Indonesia Private Law Review* 2, no. 2 (2021): 109-124.

²⁸ Mutawalli, Muhammad, Zainal Amin Ayub, Maskun Maskun, and Marthen Napang. "The Conference of Parties-27 (COP-27) Agreement As an Instrument of State Policy in Handling Deforestation: A Comparative Study of Sweden and Indonesian Governments." *Law Reform* 19, no. 1: 1-24.

²⁹ Urip Santoso, *Pendaftaran Dan Peralihan Hak Atas Tanah* (Prenada Media, 2019), 87.

According to Gursoy and Kendall, residents are likely to engage in tourism activities when they perceive substantial benefits without excessive sacrifices.³⁰ They are more inclined to support the development of tourism in their local area when the advantages of tourism outweigh the negative impacts. On the contrary, conflict is initiated when the perceived losses resulting from tourism outweigh the benefits, encompassing cultural degradation and environmental damage.³¹

The response of residents plays a pivotal role. Comprehending the behavior is crucial in grasping the manifestations of tourism. Furthermore, individuals within the local community who exhibit deep concern for community welfare and issues genuinely care about the local economy. This is because they hold the belief that tourism exerts both positive and negative influences. The marginalization that arises from development, characterized by exploitative and excessively profit-driven exploitation of natural resources, represents the subjugation of local communities. The transfer of land ownership in tourist areas contributes to poverty, unemployment, and social inequality, significantly impacting the lives of nearby communities.³²

5. Comparison of Land Ownership Transfer Rules in Indonesia and Malaysia

The transfer of land to foreigners or foreign entities with representatives in Indonesia is governed by Law Number 5 of 1960, pertaining to the Fundamental Agrarian Regulations in the form of the Right to Use and Lease Buildings. Furthermore, the Right to Use and Lease is outlined in Articles 41 to 43 of the Fundamental Agrarian Law and Articles 44 to 45. Foreigners can possess residential properties solely for those present in Indonesia, particularly in Industrial Areas that contribute to national development.

Foreign individuals residing in Indonesia who wish to acquire ownership of land or buildings are only permitted through the status of Right to Use land. The law grants them the rights for 25 years, with the possibility of extension for an additional 20 years and subsequent renewal for another 25 years. However, foreign companies are eligible to assume control through the land status of Building Rights Title, which provides them with a tenure of 30 years, extendable for 20 years, and renewable for an additional 30 years.

³⁰ Balduck, Anne-Line, Marc Maes, and Marc Buelens. "The social impact of the Tour de France: Comparisons of residents' pre-and post-event perceptions." *European Sport Management Quarterly* 11, no. 2 (2011): 91-113.

³¹ Sahide, Muhammad Alif K., Micah R. Fisher, Nurul Hasfi, Emban Ibnurusyd Mas'ud, Ahsan Yunus, Fatwa Faturachmat, Siti Halimah Larekeng, and Ahmad Maryudi. "Navigating the Hidden Politics of Water Resource Bureaucracies in Indonesia: Mapping Issue-Elements and Alliances." *Hasanuddin Law Review* 9, no. 1 (2023): 57-87.

³² F.X. Sumarja, *Problematika Kepemilikan Tanah Bagi Orang Asing, Sebuah Tinjauan Yuridis-Filosofis*, vol. 1 (Bandar Lampung: Indepth Publishing, 2012), 51.

In contrast to Malaysia, transferring land ownership to foreigners has certain restrictions conditions for foreigners to own Residential Property. There is also the Malay Reservation Act, which essentially prohibits foreigners from owning land specifically designated for the State. Restrictions on the ownership of land rights for foreigners within the territory are realized in several rules prohibiting the transfer of land rights to foreigners.³³

Malaysia only gives foreigners the right to own a residential house. In Indonesia, foreigners are restricted to owning only one residential unit, except for Very Simple or Simple House (Low-Cost Housing) types. Conversely, in Malaysia, the government permits foreigners to possess more than one unit of land or property, provided that at least one building consists of two stories with a minimum value of RM250,000 (approximately Rp750,000,000). Foreign citizens in Malaysia also enjoy a longer tenure of 90 years.

These provisions are established under the Land Law of Malaysia and have been formulated based on discussions with key authorities such as the Land and Excavation Directing Official, Johor State Economic Planning Unit (UPEN), and Johor Bahru Regional Officials. Furthermore, valuable insights are obtained from Paradise Realty Sdn. Bhd, a reputable developer and a proud member of the Real Estate and Housing Developers' Association (REHDA). These discussions were conducted on February 3 and 4, 2009, and provided comprehensive explanations regarding the regulations:

- a. In Malaysia, according to the Land National Code of 1965, there are two types of land rights, namely Freehold and Leasehold Titles. Foreign nationals have the opportunity to acquire both types of land rights. The leasehold title is typically owned by the state and is granted for 60 years or 99 years, with the possibility of renewal.
- b. In Malaysia, based on the National Land Code No.56 of 1965 Part Thirty-Three Article 433 a. The so-called Foreign Interest includes Foreign Citizens, Legal Entities established outside Malaysia, and Legal Entities established in Malaysia. More than 50% of the shares are owned by Foreign Citizens or Legal Entities established outside Malaysia.

Malaysia has an institution responsible for approving foreign property ownership, namely the Foreign Investment Committee (FIC). Currently, the approval of home purchases by foreigners is more determined by the authority of the local government/Chief Minister. For example, for property ownership in the state of Johor Bahru, the Johor Bahru Land and Excavation Officer Office will issue the approval.

³³ Polontoh, Herry M. "Transparency in Plantation Sector: Access of Cultivation Rights Title Document." *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 2 (2023): 145-156.

Generally, the minimum property/house that foreigners can own is RM.250,000 (approximately Rp.750,000,000), and there is no restriction for foreigners to purchase more than 1 (one) house/building.

Additional information from the Land and Excavation Officer shows that developers intending to sell houses or buildings to foreigners are required to obtain permission from the Royal Consultative Assembly (MMK). This process is implemented to ensure compliance with sales quotas, as foreign individuals are restricted from purchasing all the houses or buildings within a particular area. The maximum allowance in one area is limited to 20% of the total available properties. The process from acquiring land/building by foreigners to issuing a land certificate in Malaysia ranges from two to three months on average. Most Land and Excavation Offices issue land certificates based on a sale or transfer of rights from the developer to a foreigner.

One of the issues is the problem of land fully regulated in Indonesian and Malaysian law. This was evident from the many complaints of people whose land was taken by the government. It is conducted because the government has certain interests, such as road widening, construction of places of worship, schools, and others declared as development projects for the public interest. Development requires land directly controlled by the state (Indonesia) or the kingdom of the country (Malaysia), as well as land that has rights by a legal subject (land rights). Furthermore, when the land needed is in the form of state or royal land (not freehold land), the acquisition is not difficult.³⁴ The process of taking land will be complicated when it is freehold and the conditions for foreign nationals to control or inhabit a land include the following:

- a. All properties under the low-cost and low-simple categories
- b. All properties on Malay Rizab land
- c. Land allotted to Bumiputera (Lot for Bumiputera/Release of Bumiputera Lot except Industrial/Company category land is allowed to acquire Bumiputera Lot release land)
- d. Service Outlet or Workshop
- e. Agricultural Land except for tax purposes as in Para (D)
- f. Through Lelongan Awam/Court
- g. All land whose real condition is a Single Storey Ordinary Terrace House
- h. All land on which the real condition is a One and a Half Storey Ordinary Terrace House
- i. All properties whose real condition is a single, one-and-a-half, two or two-and-a-half storey

³⁴ Khan, Intan Nadia Ghulam, Kamilah Wati Mohd, Fareed Mohd Hassan, and Izawati Wook. "Customary Land Rights of Orang Asli: A Case Study in Kampung Parit Gong, Negeri Sembilan, Malaysia." *UUM Journal of Legal Studies* 12, no. 1 (2021): 199-217.

There were certain restrictions and conditions for foreigners regarding the ownership of residential property. Foreigners were not allowed to own landed property, and this was particularly in Malaysia due to the Malay Reservation Act. This act effectively prohibited foreigners from owning land designated for the State of Malaysia. However, there were specific categories of land ownership that could be pursued by foreigners, namely:

- a. All houses are of the simple type and very simple houses
- b. All land/houses built on land designated for malays (malay reserve land)
- c. All land for workshop designation
- d. All ordinary houses in the form of one-level (single-story)
- e. All houses in the form of one-and-a-half-story buildings
- f. All land/houses used for shops with one level, one and a half floors, two levels, or two and a half floors
- g. Houses are included in the quota for bumiputra and allowed to be purchased by foreigners

Building and Residential Category: a) Bungalow consisting of two floors with a price of RM.500,000 and above 20% quota; b) A house consisting of two floors with a price of 350,000 and above; and c) Condominiums/apartments priced at RM.350,000 and above 30% quota. Meanwhile, Commercial Building Category: a) Buildings of 3 floors or more with a price of RM.500,000 and above 10% quota; b) Building shops in the trading area with a price of RM.500,000 and above; and c) Buildings for exhibitions priced at RM.500,000 and above.

Most of the Offices of Land and Quarry Officials do not process the issuance of new certificates but only issue land certificates due to a sale and purchase/transfer of rights from the Developer to a foreigner. The average number of houses/buildings sold annually is approximately 500 units. The easiest houses/buildings to sell are in the state of Selangor because buying does not require a 10% down payment. Klantan stood out due to the prevalence of State land and Malay Reserve Land, resulting in limitations on land ownership by foreigners. In Johor Bahru, the prices of houses and buildings were influenced by the strategic location near the Malaysia-Singapore border. This geographical proximity played a significant role in shaping property prices in the area.

6. Conclusion

The rapid development of the tourism industry in Indonesia opens up opportunities for legal smuggling practices related to foreign land ownership, which are prohibited by the law. This practice, which contravenes legislation, has created a significant gap necessitating attention and rectification. The presence of more foreign tourists opens up opportunities for residents to earn income. The occurrence of this phenomenon has prompted local government officials, particularly the Head of Peratin Lintik in Krui

Selatan District, Pesisir Barat Regency, to make a heartfelt appeal to the community. They strongly urge residents, specifically those who own beachfront properties, to refrain from selling land to foreign tourists. This is because tourists already possess a significant amount of land, and it is crucial to prevent further control by foreign entities.

The process of development across multiple sectors, including tourism, constitutes an inherent social reality. Different tourism industry development projects are slowly causing the process of marginalization of the community around the tourist area. The implication of such practices is the shift in ownership of foreign land. Furthermore, the phenomenon of landowners transitioning into workers due to land loss reflects a significant shift in socio-economic dynamics. The development intended to foster prosperity within the community paradoxically marginalizes the concept by undermining its access to land ownership.

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