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# Legal Analysis of Inconsistencies in the Usage Rights Period Norms for Foreign Nationals in the UUPA & PP Number 18/2021

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## Abstract

This study aims to analyze the substantive suitability of the provisions of Government Regulation No. 18 of 2021 concerning the 80-year time limit for foreign nationals' Right of Use in the perspective of the basic principles of national agrarian law. Through a normative juridical approach, this study applies a descriptive-prescriptive qualitative analysis to examine the issue in depth in order to determine the proportionality of the time limit to the spirit of the UUPA. The findings show that hierarchically, there is no textual inconsistency between the UUPA and PP No. 18 of 2021 because the UUPA philosophically does not specifically regulate the number of years for Right of Use, so that the stipulation of 80 years is a filling of a technical norm gap that is formally valid. This period has the potential to be inconsistent with the principle of nationality in Article 21 of

the UUPA and the character of Right of Use as a temporary right, given that its duration is close to the total validity period of Right of Building Use for Indonesian citizens and allows for de facto control over strategic land through the imposition of Right of Lien. This study recommends harmonizing regulations by proportionally limiting the term of Use Rights for foreign nationals, for example to 45 years as stipulated in Government Regulation No. 40 of 1996, so as to continue providing legal certainty for investment without sacrificing the principles of agrarian justice and the protection of long-term national interests.

### Keywords

Right of Use; Foreign Nationals; Substantive Conformity; UUPA; Government Regulation No. 18 of 2021

## A. Introduction

Humans live in the world with various needs, one of the most important of which is shelter. In addition, humans also need space to carry out activities so that life can run as it should. Given these needs, humans are closely related to land. In Indonesia, land is an important aspect that is inseparable from the activities of living beings, as evidenced by the regulations on land as stipulated in the country's constitution. Article 33 paragraph (3) of the 1945 Constitution states that "The earth and water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people." In order to carry out the mandate of the constitution, a regulation in the form of a law was drafted to further regulate specific aspects of agrarian matters in Indonesia, namely through Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which was followed by various subordinate regulations. The UUPA regulates various provisions related to land in Indonesia, including land rights. Broadly speaking, Article 2 paragraph (2) of the UUPA states that "the state, as the organization with the highest authority, is the holder of the right to regulate, administer, and determine matters relating to land in Indonesia." However, Article 4 paragraph (1) of the UUPA also states that land

controlled by the state can also be granted to individuals or legal entities, which is what is known as Land Rights.

Rights literally mean absolute ownership by someone that has existed since they were born into the world. Then, as humans develop, the use of these rights will differ from person to person. In the agrarian sector, rights are also recognized, one of the most important being the right to land. This right to land gives an individual or legal entity the authority to own, control, manage, or utilize land in other ways as long as it is in accordance with applicable laws and regulations issued by the state<sup>1</sup>. When discussing rights, it is closely related to obligations. Legally, land rights can only be obtained through a mandatory registration process as mandated by law. This procedure serves as the basis for the legality and proof of valid rights for the holder<sup>2</sup>.

Land rights in Indonesia after the enactment of the Basic Agrarian Law consist of several types, including Freehold Title, Building Use Rights, Business Use Rights, Right of Use, and other land rights. Although there are various types, basically all rights have similarities, namely granting authority, as well as obligations and even prohibitions to the person who holds the right. The difference lies in the limitations on what the right holder may and may not do<sup>3</sup>.

As mentioned earlier, the UUPA stipulates several types of land rights, including Freehold Title, Building Use Rights, Business Use Rights, and Right of Use. The definition of Right of Use is regulated in Article 41 paragraph (1) of the UUPA: "Right of Use is the right to use and/or collect the produce of land directly controlled by the State or land owned by another person, which grants the authority and obligations specified

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<sup>1</sup>Rambi, S. M. K., N. L. Lengkong, dan M. M. M. Setlight. Kajian Hukum Hak Pakai atas Tanah bagi Warga Negara Asing di Indonesia dalam Meningkatkan Investasi. *Lex Administratum* 12, no. 2 (2024): 7.

<sup>2</sup>Maemunah, S. *Analisis Yuridis terhadap Kepastian Hukum Kepemilikan Hak atas Tanah bagi Warga Negara Asing di Indonesia*. Tesis Magister Kenotariatan, Fakultas Hukum, Universitas Islam Sultan Agung, 2024.

<sup>3</sup>Harsono, Boedi. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan, 2005.

in the decision to grant it by the official authorized to grant it or in an agreement with the landowner, which is not a lease agreement or land cultivation agreement, as long as it does not conflict with the spirit and provisions of this Law."

Furthermore, Article 42 emphasizes that legal subjects who are entitled to hold Right of Use include foreigners residing in Indonesia, or those who are legally referred to as Foreign Nationals (WNA). The UUPA itself does not explicitly mention the duration of the Right of Use, including for foreign nationals, but only states that everything is regulated in an agreement or a decision granted by the competent authority as long as it does not conflict with applicable laws.

Regarding implementing regulations, in Indonesia, Law No. 40 of 1996 concerning Land Use Rights, Building Use Rights, and Land Rights was once in effect. This regulation stipulated a specified period for the granting of Right of Use, namely in Article 45 paragraph (1) that the Right of Use as referred to in Article 42 has a maximum period of twenty-five years. This regulation allows for an extension of a maximum period of twenty years, or it may also be granted for a certain period of time as long as it meets certain requirements for continued use, whereby the total right of use that can be granted to the right holder is for 45 years or as long as the land is still in use. The provisions of Article 45 paragraph (2) stipulate that Right of Use that has expired or whose extension period has expired can be renewed by the relevant right holder.

Over time, many dynamics have occurred in society, causing laws to become dynamic in order to keep pace with these changes. The same is true for other regulations that discuss more specific matters related to those regulated in the UUPA. One such implementing regulation is Government Regulation No. 18/2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, which also regulates the duration of Right of Use, including for foreign nationals. The enactment of this Government Regulation simultaneously revokes Government Regulation No. 40 of 1996. In this Government Regulation, Right of Use is now divided into two categories: Right of Use with a fixed term and Right of Use for as long as it is used. Specifically for

foreign nationals, the instrument used is Right of Use with a fixed term. Based on Article 52 paragraph (1) of PP No. 18/2021, Land Use Rights on state land and HPL are granted with an initial duration of 30 years, an extension of 20 years, and a renewal of 30 years. This total accumulation of 80 years represents a significant expansion in duration compared to the previous limits set out in Government Regulation No. 40 of 1996.

The imposition of time limits on land rights, except for ownership rights, is intended to limit the control of rights holders over land, to ensure that within that period of time the land rights held by rights holders will be utilized and used properly, and to prevent excessive ownership, as referred to in Article 33 paragraph (3) of the 1945 Constitution, which states that “the land, water, and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people.”<sup>4</sup>

Indonesia runs its government based on the principle of the rule of law, one of the main instruments of which is reflected in the mechanism for forming and implementing legislation. In law, there is a hierarchy of laws and regulations. Within this hierarchy, there is a material structure of norms that forms the highest level of norms, which then serve as guidelines for lower-level norms. Thus, if there is a conflict between lower-level norms, it must be referred back to the higher-level norm.<sup>5</sup>

The Basic Agrarian Law (UUPA), which is the umbrella law for national agrarian affairs, regulates land ownership in Indonesia based on the principles of social justice and state sovereignty over land. However, the enactment of Government Regulation No. 18/2021 has sparked debate, particularly regarding the granting of land use rights to foreign nationals for an extended period of up to 80 years. Quoting the Director General of Legislation, there are at least

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<sup>4</sup>Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

<sup>5</sup>Murti, A. K., N. Wulan, dan A. B. Saputra. *Problematika Konflik Norma Penerapan Jangka Waktu Hak atas Tanah Berdasarkan Peraturan Pemerintah Nomor 12 Tahun 2023.* *Prosiding Seminar Hukum Aktual 1*, no. 3 (2023): 34.

four consequences of inconsistencies in legislation. The first is the emergence of different interpretations and implementations, followed by legal uncertainty, legal dysfunction, which is a condition where the law no longer serves as a guideline for public behavior, and other legal functions, as well as the failure to achieve effective and efficient law enforcement.<sup>6</sup>

In a previous study conducted by Hajar Aswatiningsih entitled "Legal Certainty of Ownership Rights to Apartment Units by Foreigners based on Government Regulation Number 18 of 2021," the author analyzed the legal certainty guarantees for foreign nationals in "ownership of apartment units." Although Article 47 of Law Number 20/2011 mandates the use of a Certificate of Ownership of Apartment Units (SHMSRS), legally, the rights granted to foreign nationals remain in the form of Right of Use. This study focuses on the implementation of this regulation based on the perspective of Government Regulation Number 18/2021. This study examines legal certainty for foreign nationals, focusing on foreign ownership of apartment units from the perspective of Government Regulation No. 18 of 2011 concerning Apartment Buildings<sup>7</sup>, while this study focuses on the substantive compatibility of the term of Right of Use for foreign nationals contained in the UUPA and Government Regulation No. 18/2021 with the philosophical spirit of the UUPA.

Furthermore, the results of research conducted by Syauqina Fildzah Hanifa and Mira Novana Ardani entitled "Problems with the Regulation of the Term of Use Rights for Foreigners in National Land Law" explain that there have been developments regarding the term of use rights in Indonesian legislation. This study also explains that changes in the term of right of use have a positive impact, especially in the fields

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<sup>6</sup>Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia. Harmonisasi Peraturan Perundang-undangan. Diakses 2021. <http://ditjenpp.kemenkumham.go.id/htndan-puu/421-harmonisasi-peraturanperundangundangan.html>

<sup>7</sup>Aswatiningsih, H. *Kepastian Hukum Status Hak Milik atas Satuan Rumah Susun oleh Orang Asing Berdasarkan Peraturan Pemerintah Nomor 18 Tahun 2021*. Disertasi Doktor, Universitas Islam Malang, 2021.

of tourism and investment, but there are concerns that this will lead to inequality in access to land for Indonesian citizens and shift the principles of the constitution<sup>8</sup>. This study will examine in greater depth and focus on the suitability of the substance of the Right of Use period contained in Government Regulation No. 18 of 2021 to the philosophical spirit of the Basic Agrarian Law, and determine the legal implications of the 80-year period in the Government Regulation on the principles of social justice and state sovereignty over land.

Meanwhile, research conducted by Putri Maufiroh, Bagus Renata Rachman, and Ety Purnaningrum entitled “Legal Review of Vertical Inconsistencies in Government Regulation No. 18 of 2021” explains the vertical inconsistencies in several articles of GR No. 18/2021 with the UUPA. one of which is Articles 4 and 5 of Government Regulation No. 18/2021, which contradict Article 137(1) and (3) of the Job Creation Law and Article 3 of the Land Law, which discuss the origin of land that can be granted Management Rights (HPL)<sup>9</sup>. Meanwhile, this study examines the substantive compatibility of the term of use rights stipulated in Government Regulation No. 18/2021 with the philosophical spirit of the Land Law.

As explained earlier, this study discusses the differences in the determination of the term of use rights as regulated in the Basic Agrarian Law, which does not specify a specific term, and Government Regulation No. 18/2021, which sets the term of use rights at up to 80 years. This is feared to have the potential to cause inequality in access to land by Indonesian citizens and even land monopoly<sup>10</sup>. considering

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<sup>8</sup>Hanifa, S. F., dan M. N. Ardani. Problematika Pengaturan Jangka Waktu Hak Pakai bagi Orang Asing dalam Hukum Tanah Nasional. *At-Taklim: Jurnal Pendidikan Multidisiplin* 2, no. 6 (2025): 627-636.

<sup>9</sup>Maufiroh, Putri, Bagus Renata Rachman, dan Ety Purnaningrum. Kajian Hukum terhadap Inkonsistensi Vertikal Peraturan Pemerintah Nomor 18 Tahun 2021. *Jurnal Education and Development* 9, no. 4 (2021): 191-196.

<sup>10</sup>Murti, A. K., N. Wulan, dan A. B. Saputra. Problematika Konflik Norma Penerapan Jangka Waktu Hak atas Tanah Berdasarkan Peraturan Pemerintah Nomor 12 Tahun 2023. *Prosiding Seminar Hukum Aktual* 1, no. 3 (2023): 35.

that land use rights with a specific term used by foreign nationals can be held on land with management rights that can be subject to encumbrances, as well as the disharmony with the flexibility of the land use rights term regulated in the UUPA.

Based on this explanation, the author wishes to examine why there has been a change in the policy on the term of Use Rights for foreign nationals from a maximum of 45 years in Government Regulation No. 40 of 1996 to 80 years in Government Regulation No. 18 of 2021, and how the substance of this term is consistent with the philosophical spirit of the Basic Agrarian Law (UUPA). and what are the legal and implementational impacts of the 80-year term on the protection of Indonesian citizens' rights to land, considering that there are already foreign nationals who have used Right of Use after the enactment of Government Regulation No. 18 of 2021?

This study aims to analyze the substantive suitability of setting a maximum 80-year Right of Use for foreign nationals in Government Regulation No. 18/2021 in relation to the philosophical principles of the Basic Agrarian Law No. 5 of 1960, considering that the Basic Agrarian Law deliberately does not specify a specific number of years for Land Use Rights but provides a flexible formulation of “for a certain period of time or as long as the land is used for certain purposes” as a form of regulatory gap filling. The analysis focuses on three main dimensions: first, evaluating the proportionality of the 80-year period to the character of Use Rights as temporary and limited rights of use for foreign nationals as embodied in the principle of nationality in Article 21 of the Basic Agrarian Law; second, examining the potential for blurring the conceptual boundaries between temporary usage rights and strong control rights, given that this period is close to the total validity period of Building Use Rights for Indonesian citizens (30+20+30 years); and third, identifying the legal implications of setting such a long term on the principle of social justice in agrarian access and state sovereignty over land as mandated by Article 33 paragraph (3) of the 1945 Constitution, in order to provide normative recommendations for harmonizing regulations that balance

legal certainty for investment and protection of long-term national interests.

This study uses a normative legal research approach with descriptive-prescriptive qualitative analysis methods to examine the substantive suitability of the term of use regulations for foreign nationals in Government Regulation No. 18 of 2021 in relation to the philosophical principles of the Basic Agrarian Law No. 5 of 1960. Data collection was conducted through a literature study of primary legal materials (the 1945 Constitution, the Basic Agrarian Law, Government Regulation No. 18/2021, and related regulations), secondary legal materials (scientific journals, textbooks, dissertations, and relevant court decisions), and tertiary legal materials (legal dictionaries and encyclopedias) to support conceptual understanding.

Data analysis was conducted qualitatively through normative interpretation techniques to understand the textual meaning of the provisions of the legislation, as well as substantial analysis to evaluate the proportionality of the 80-year period to the spirit of the UUPA, particularly the principle of nationality, the character of Hak Pakai as a temporary and limited right, and the principle of social justice in national land ownership, while still considering the historical context of the formation of the UUPA as a response to colonialism and the protection of Indonesia's agrarian sovereignty. This approach allows researchers to not only identify regulatory gaps between the UUPA, which does not specify a specific number of years, and the PP, which provides technical specifications, but also to provide normative recommendations for regulatory harmonization in line with the spirit of the constitution and long-term national interests.

## **B. Changes in the Policy on the Term of Use Rights for Foreign Nationals from a Maximum of 45 Years in Government Regulation No. 40 of 1996 to 80 Years in Government Regulation No. 18 of 2021 and the Substantial Compatibility of the Term with the Philosophical Spirit of the Basic Agrarian Law**

Indonesia is a country rich in natural resources and

geographical diversity. With all its wealth, Indonesia has a variety of resources that support people in achieving a decent life. Land is one form of natural wealth that can improve the welfare of society because it can support various human needs. Land and other natural resources cannot automatically provide benefits if humans do not preserve, protect, cultivate, and utilize them. Therefore, humans must be able to make the best use of natural resources. Considering that Indonesia is a nation consisting of a single people, under no circumstances can anything sever the relationship between this nation and the land, water, and air that exist as long as they remain<sup>11</sup>. Thus, it is only fitting that Indonesia, as a country based on the rule of law, has regulations related to all matters concerning land. This is realized through the Indonesian constitution, specifically in Article 33 paragraph (3) of the 1945 Constitution.

Given that Indonesia was once a colonized country, after independence there were still laws from the colonial era that remained in force. This was also the case with land laws, which were later replaced by a national law that ended the dualism of land laws, namely the laws originating from the colonial state and the customary laws of the Indonesian people, namely Law - Law Number 5 of 1960 concerning Basic Agrarian Principles, which became the national law relating to land in Indonesia.

With the development of technology, it has become easier for people to access information and connect with other countries. This has also had an impact on Indonesia, which has seen an increase in the number of foreign nationals visiting the country. Referring to "Law No. 6 of 2011 concerning Immigration, Foreign Nationals or Foreigners are people who are foreign nationals but have specific permits to reside in Indonesia. This specific permit, in the context of the Basic Agrarian Law (UUPA), can be interpreted as a Right of Use, because the principle of nationalism in the UUPA prohibits foreign nationals from having permanent rights to land. The provisions of Article 21 paragraph (1) give

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<sup>11</sup>Ardani, M. N. Kepemilikan Hak atas Tanah bagi Orang Asing di Indonesia. *Law Reform* 13, no. 2 (2017): 208.

exclusivity to Indonesian citizens as the sole legal subjects who have the right to hold Ownership Rights in Indonesian territory. However, the existence of this article does not mean that foreign nationals are not allowed to own land in Indonesia, but their control is limited to Right of Use or Building Lease Rights, and not Ownership Rights<sup>12</sup>. The subject of land rights in Indonesia has undergone an expansion, as can be seen in Government Regulation No. 32/1994 in conjunction with Government Regulation No. 31/2013, which was reinforced by Government Regulation No. 40/1996 and Government Regulation No. 41/1996 which changed the concept that initially the UUPA only allowed foreigners residing in Indonesia to be subjects of land rights in Indonesia. However, this restriction has now shifted with the recognition of foreigners who do not reside in Indonesia as legal subjects in land ownership rights<sup>13</sup>. Residing in this case refers to foreigners who are carrying out economic activities in Indonesia for a certain period of time, during which they need a place to live<sup>14</sup>.

The regulation of Right of Use in Indonesia was initially stipulated in the Basic Agrarian Law (UUPA), whereby Right of Use is included in the rights to land granted to subjects that are also regulated. The definition of Right of Use in Article 41 paragraph (1) of the UUPA is the right to use and/or collect the produce of land that is directly controlled by the state or owned by another party<sup>15</sup>. Paragraph 2 then states that Land Use Rights are granted for a certain period of time or as long as the land is used for specific purposes. In accordance with the explanation of Articles 41 and 42 of the Basic Agrarian Law (UUPA), Land Use Rights are an instrument that allows foreign nationals residing in Indonesia to have limited rights

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<sup>12</sup>Legowo, A. Harmonisasi Pengaturan Pemberian Jangka Waktu Hak Pakai bagi Warga Negara Asing. *Arena Hukum* 10, no. 1 (2017): 99.

<sup>13</sup>Sumarja, F. X. Orang Asing sebagai Subjek Hak atas Tanah di Indonesia. *Jurnal Masalah-Masalah Hukum* 44, no. 3 (2015): 313.

<sup>14</sup>Sutedi, Adrian. *Tinjauan Hukum Pertanahan*. Jakarta: Pradnya Paramita, 2009.

<sup>15</sup>Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria.

over land<sup>16</sup>. In principle, the UUPA stipulates that the involvement of foreigners with land assets in Indonesia must be limited to certain uses, not absolute ownership<sup>17</sup>. The biggest factor causing the absence of a definite term for Right of Use in the UUPA is because, philosophically, the regulations made at that time were very much based on the spirit of post-independence nationalism, so caution was needed in granting land rights to foreigners<sup>18</sup>.

Given that the Basic Agrarian Law (UUPA) functions as *lex generalis* in agrarian regulation, particularly in the land sector, specific provisions regarding the legal relationship between foreigners residing in Indonesia and land rights do not have specific rules in the UUPA itself<sup>19</sup>. Therefore, more detailed regulations are generally found in the implementing regulations below it. One such regulation is "Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. This government regulation is an implementing regulation of Law Number 11 of 2020 concerning Job Creation" (hereinafter referred to as UUCK). This regulation was initially based on Articles 142 and 185 letter b of the UUCK<sup>20</sup>. Article 142 in the UUCK is included in Chapter VIII concerning Land Acquisition, specifically in the section on Land. This article states that the provisions regarding management rights will be regulated in a Government Regulation.

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<sup>16</sup>Umami, A. M., dan E. J. Subadi. Hakikat Regulasi Fungsi dan Jangka Waktu Hak Pakai atas Tanah bagi Orang Asing di Indonesia. *Private Law* 5, no. 2 (2025): 619-626.

<sup>17</sup>Mahadewi, K. J. Tinjauan Yuridis Karakteristik Penggunaan Hak Pakai dalam Kepemilikan Apartemen oleh Warga Negara Asing di Indonesia. *Gema Keadilan* 6, no. 2 (2019): 184-195.

<sup>18</sup>Hanifa, S. F., dan M. N. Ardani. Problematika Pengaturan Jangka Waktu Hak Pakai bagi Orang Asing dalam Hukum Tanah Nasional. *At-Taklim: Jurnal Pendidikan Multidisiplin* 2, no. 6 (2025): 629.

<sup>19</sup>Umami, A. M. Pengaturan Hak Pengelolaan atas Tanah Pasca Berlakunya Peraturan Pemerintah Nomor 18 Tahun 2021. *Gane Swara* 19, no. 1 (2025): 358-362.

<sup>20</sup>Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah.

In Government Regulation No. 18 of 2021, provisions regarding right of use are regulated from Article 49 to Article 63, which cover everything from the subject of right of use to the termination of right of use. This Government Regulation also specifically regulates the term of Right of Use and the extension period of Right of Use, which is precisely stated in Article 52 paragraphs (1) to (5). Article 52 paragraph (1) of Government Regulation No. 18 of 2021 states that right of use over State Land and Managed Land shall be granted for a maximum period of thirty years, extendable for a period of twenty years, and renewable for a maximum period of thirty years, with a total period of eighty years.<sup>21</sup>

Furthermore, Article 52 paragraph (3) states that “Right of Use with a term on Freehold Land may be granted for a term of thirty years,” then extended for a maximum of thirty years, and the renewal itself can be done with a deed of granting right of use on Freehold Land. This right can be granted to the recipient of the Right of Use, where Article 49 paragraph (2) itself states that one of the recipients of this Right of Use is a Foreigner. The regulations do not mention any exceptions regarding who can receive Right of Use on State Land, Management Rights Land, and Freehold Land, thus it can be concluded that the foreign nationals referred to in Article 49 paragraph (2) are also entitled to use Right of Use with a term in accordance with the provisions. The differences in the regulations on the term of right of use for foreign nationals can be seen in the following table

**Table 1: Comparison of Lease Term Regulations for Foreign Nationals**

Aspect	UUPA No.5/1960	PP No.40/1996	PP No.18/2021
Nature of Regulation	Flexible, does not specify a specific number of	Specific, limited	Specific, extended

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<sup>21</sup> *Ibid.*

	years		
Maximum Term	For a certain period or as long as it is used	45 years (25 + 20)	80 years (30 + 20 + 30)
Subject (WNA)	Foreign nationals residing in Indonesia	Foreign nationals residing in Indonesia	Foreign nationals (without residency requirements)
About extended	Not explicitly regulated	Yes, maximum 20 years	Yes, extended and renewed
Can be encumbered with a lien	Not regulated	Not regulated	Yes (Article 60 paragraph 1)
Status in Hierarchy	Lex generalis	Implementing regulation (revoked)	UUCK implementing regulation

Source: Researcher Analysis, 2026

The establishment of a time limit for Right of Use has caused dynamics regarding the position of “Foreigners as one of the subjects of Right of Use.” Although Foreigners cannot have Right of Ownership, as it is known that Right of Ownership is the strongest right compared to other land rights<sup>22</sup>, there is still the potential for an impact that will actually harm Indonesian citizens. With the enactment of Government Regulation No. 18 of 2021, when HPL can be encumbered with Right of Use by foreign nationals, this is where the exclusive nature of investment emerges, “Right of Use with a term can be used as collateral for debt by encumbering it with a lien.” However, this is contrary to Article 12 paragraph (1) of Government Regulation No. 18 of 2021, which states that Management Rights cannot be used as collateral for debt by encumbering them with a mortgage. This provision aims to ensure that pure Management Rights remain free from the burden of a mortgage. Nevertheless, HPL holders are authorized to grant derivative rights over land

<sup>22</sup>Suardi, S., M. B. Taufan, F. Mubakkirah, dan I. A. Nafilah. Implementasi Hak Milik atas Tanah dalam Tinjauan Hukum Islam dan Hukum Agraria. *Comparativa* 4, no. 2 (2023): 139.

to other parties (the Community) for the purpose of cooperation, one of which may be Right of Use, as stated in Article 60 paragraph (1) of Government Regulation No. 18 of 2021, which states that a fixed-term Right of Use may be used as collateral for debt by encumbering it with a lien. Thus, there is a contradiction in this Government Regulation, where rights to land originating from and existing on top of the Management Rights can be encumbered with a mortgage, which is in stark contrast to Article 12(1) of Government Regulation No. 18 of 2021.<sup>23</sup>

The UUPA is a regulation that was born out of a sense of nationalism and awareness that the Indonesian people have a right to their land. Therefore, a special regulation on land was needed that did not contain elements of colonialism, as Indonesia had become an independent nation and state. In Indonesian agrarian law, specifically the UUPA, there are significant differences regarding land rights based on citizenship. Land rights that grant full authority, such as Freehold Rights, Cultivation Rights, and Building Rights, are reserved for Indonesian citizens (WNI), while foreign nationals can only be granted temporary and limited rights of control, such as Right of Use. This is due to the principle of nationality adopted by the UUPA.<sup>24</sup> Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) is a *lex generalis* in the field of land that regulates the basic framework of legal relations between legal subjects and land rights, including for foreigners residing in Indonesia. As a general norm, the UUPA serves as a reference and limit for implementing regulations below it, so that regulations in government regulations may not deviate from the substance and objectives set forth in the UUPA.<sup>25</sup> Based on Hans Kelsen's theory of legal hierarchy, the

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<sup>23</sup>Basir, M. A., M. A. Syarif, dan N. Nurjannah. Kepastian Pembebanan Hak Tanggungan terhadap Hak atas Tanah di atas Hak Pengelolaan. *Jurnal Hukum dan Kenotariatan* 6, no. 2 (2023): 845.

<sup>24</sup>Rubiati, B. Kepastian Hukum Pemilikan Rumah Susun oleh Orang Asing di Indonesia Dikaitkan dengan Prinsip Nasionalitas. *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* (2025).

<sup>25</sup>Umami, A. M., dan E. J. Subadi. Hakikat Regulasi Fungsi dan Jangka Waktu Hak Pakai atas Tanah bagi Orang Asing di Indonesia. *Private Law* 5, no. 2 (2025): 619-626.

constitution occupies the position of fundamental legal norm or highest regulation. This principle emphasizes that the validity of every legal norm is higher, thus forming a hierarchical legal pyramid structure.<sup>26</sup> Thus, this theory states that every lower norm must not deviate and must remain consistent with higher legal norms. In the context of agrarian law, it is clear that the highest norm after Article 33 paragraph (3) of the 1945 Constitution is the UUPA, so there should be no PP or any regulation below it that is inconsistent with the norms of the UUPA.<sup>27</sup>

The formulation of agrarian policy related to foreigners is based on several fundamental considerations. In addition to safeguarding national interests and protecting the property rights of the Indonesian people, the policy is driven by the assumption that the position and presence of foreigners in Indonesian territory is temporary<sup>28</sup>. The Basic Agrarian Law applies the principle of nationality, which is the root cause of restrictions on land rights that may be owned by foreign nationals, with the Basic Agrarian Law placing Indonesian citizens in a very vital position in terms of land ownership.<sup>29</sup>

Under the UUPA, Right of Use does not have a definite term, as it is adjusted to the needs of the parties. Meanwhile, under PP No. 18 of 2021, the validity period of Right of Use is given with a cumulative duration of a maximum of 80 years. The stages include an initial period of a maximum of 30 years, followed by an extension period of up to 20 years, and a renewal phase with a maximum term of 30 years. Although hierarchically Government Regulation No. 18 of 2021 does not textually contradict the UUPA (because the UUPA does not regulate specific years), the determination of the 80-year

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<sup>26</sup>Ilyas, A., dan D. E. Prasetyo. Problematika Peraturan Mahkamah Konstitusi dan Implikasinya. *Jurnal Konstitusi* 19, no. 4 (2022): 794–818.

<sup>27</sup>*Ibid.*

<sup>28</sup>Mahadewi, K. J. Tinjauan Yuridis Karakteristik Penggunaan Hak Pakai dalam Kepemilikan Apartemen oleh Warga Negara Asing di Indonesia. *Gema Keadilan* 6, no. 2 (2019): 184-195.

<sup>29</sup>Wisnoe, M. *Kepemilikan Hak atas Tanah bagi Warga Negara Asing dan Kewarganegaraan Ganda*. Tesis, Fakultas Hukum Universitas Indonesia, 2012.

term needs to be evaluated for its suitability with the philosophical principles of the UUPA. The provisions of Article 41 paragraph (2) of the UUPA emphasize that Right of Use is essentially temporary, "where its existence is bound to a certain period of time or as long as the land is still relevant to its original purpose, a formulation that philosophically emphasizes its temporary and functional nature. The 80-year term has the potential to blur the conceptual boundary between temporary use rights (Hak Pakai) and strong control rights (HGB/Hak Milik), so it needs to be criticized from the perspective of proportionality to the principle of nationality in Article 21 of the UUPA. Changes to regulations related to Hak Pakai for foreign nationals can be seen in the following table

Table 2: Chronology of Changes in Land Use Rights Regulations for Foreign Nationals

Year	Regulation	Term	Notes on Changes
1960	UUPA No.5/1960	Not specified	Flexible principle, as needed
1996	PP No. 40/1996	45 years	Stricter time limit
2021	PP No. 18/2021	80 years	Significantly extended, may be encumbered with liens
Recommendation	Harmonization regulation (proposal)	45 years as in Government Regulation No. 40/1996	To balance investment and agrarian justice

Source: Researcher Analysis, 2026

The significant change in the term of Right of Use for foreign nationals from a maximum of 45 years in Government Regulation No. 40 of 1996 to 80 years in Government Regulation No. 18 of 2021 cannot be separated from the context of the national economic policy behind it. Government Regulation No. 18 of 2021 is an implementing regulation of Law No. 11 of 2020 concerning Job Creation (UUCK), which fundamentally aims to encourage increased investment and ease of doing business in Indonesia. Within the framework of the UUCK, the land sector is seen as one of the crucial variables that can be optimized to attract investors, including foreign investors.

There are at least three main rationales behind the policy to extend the term: First, the 80-year term (30-year validity period + 20-year extension + 30-year renewal) is intended as a non-fiscal incentive to increase the attractiveness of foreign investment in the property and tourism sectors. The long term provides greater business certainty for foreigners who wish to invest in Indonesia. As stated by Rambli et al., granting a sufficiently long term of Right of Use can be understood as an effort by the government to provide legal certainty for foreign investors who wish to invest in the long term<sup>30</sup>. This is in line with the president's directive that investment for job creation must be prioritized and lengthy procedures must be cut.<sup>31</sup>

Secondly, this policy is a form of adaptation to global needs and efforts to increase Indonesia's competitiveness in the region. Several neighboring countries such as Malaysia, Thailand, and Vietnam have offered long-term property ownership schemes for foreigners, so Indonesia needs to respond with competitive policies in order not to lose opportunities for foreign capital inflows. PT Intiland Tbk Corporate Secretary Theresia Rustandi said that at the beginning of the pandemic, foreign investors were looking for locations in Asia to invest in property, but Indonesia did not enjoy these investments because they were enjoyed by Malaysia, Thailand, and Vietnam, which was a lost opportunity for Indonesia.<sup>32</sup> The 80-year duration is seen as being able to match or even exceed the standards offered by other countries in Southeast Asia.

Third, from a technical legal perspective, the determination of this specific number of years constitutes

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<sup>30</sup>S. M. K. Rambli, N. L. Lengkong, dan M. M. M. Setlight, "Kajian Hukum Hak Pakai atas Tanah bagi Warga Negara Asing di Indonesia dalam Meningkatkan Investasi," *Lex Administratum* 12, no. 2 (2024): 7.

<sup>31</sup>"Panduan Lengkap Hak Pakai: Jangka Waktu, Syarat & Biaya Perpanjangan 2025," *PropNex Plus*, 11 November 2025.

<sup>32</sup>Syahrizal Sidik, "Asing Bisa Punya Apartemen, RI Saingan dengan Malaysia Dkk," *CNBC Indonesia*, 9 Oktober 2020.

regulatory gap filling, which is formally valid. As explained earlier, the UUPA as *lex generalis* deliberately does not specify a particular year for Right of Use, but provides a flexible formulation of “for a certain period of time or as long as the land is used.” Thus, PP No. 18 of 2021 exercises the function of delegating authority to provide quantitative certainty on the period of time that was originally qualitative in the UUPA. The Director General of Land Rights and Registration at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), Suyus Windayana, emphasized that the Ministry of ATR/BPN has made several changes to land regulations, one of which is to facilitate the ownership of residential houses for foreign nationals with the aim of opening up investment opportunities as widely as possible.<sup>33</sup>

However, this economic rationality cannot automatically justify this policy without testing it against the philosophical spirit of the UUPA. This is precisely where the problem lies, because considerations of ease of investment, which are the driving force behind policy changes, have the potential to shift the main priority of national land control as mandated by Article 33 paragraph (3) of the 1945 Constitution, namely “for the greatest prosperity of the people.” When economic acceleration is placed above the principle of prudence in granting land access to foreigners, what is threatened is agrarian sovereignty and social justice for Indonesian citizens.

A similar criticism was once expressed by Deputy Speaker of the House of Representatives Fadli Zon in response to Government Regulation No. 103 of 2015, which also extended the term of land use rights. He believes that the government is too eager to pursue economic growth, thus tending to ignore logical, synchronized policies and failing to think long term.<sup>34</sup> The Chair of the IHCS Advisory Committee, Gunawan, is also concerned that without adequate restrictions, foreigners could buy cheap houses at a time

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<sup>33</sup>“Kementerian ATR/BPN Upayakan Peningkatan Investasi dan Ekonomi Nasional,” InfoPublik, 17 Mei 2023.

<sup>34</sup>“PP Kepemilikan Rumah WNA, Kemunduran Reforma Agraria,” Hukumonline, 18 Januari 2016.

when Indonesians want to own affordable houses, thus potentially creating inequality in access to land.<sup>35</sup>

The spirit of the UUPA not only affirms state control of land for national interests, but also consciously regulates the position of foreigners in the land rights system in Indonesia. This regulation is based on a clear distinction between land rights for Indonesian citizens and foreigners, both in terms of function and duration of control. Within the framework of the UUPA, land rights that can be granted to foreigners are principally limited to Right of Use, which is systematically placed at a lower level than Freehold Rights and Right of Building Use, which are only reserved for Indonesian citizens. Therefore, restrictions on the function and duration of Right of Use are a logical consequence of the principle of nationality adopted by the UUPA, so that the regulations should not be the same, let alone exceed the duration of land rights reserved for citizens<sup>36</sup>.

Indonesian agrarian law is based on a number of fundamental principles enshrined in the Basic Agrarian Law (UUPA), one of which is the principle of justice. Specifically, the principle of justice requires that land management and utilization be carried out proportionally for all levels of society<sup>37</sup>. However, the existence of PP No. 18/2021 raises issues related to fairness in land rights, which should be more favorable to Indonesian citizens. This regulation expands access for foreign nationals to own landed houses on land with Right of Use, whether sourced from state land, management rights, or ownership rights. In addition, foreign nationals are also allowed to own apartment units built on land with Right of Use or Right to Build (HGB) status, as stipulated in Article 71 paragraph (1) of Government

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<sup>35</sup> *Ibid.*

<sup>36</sup> Umami, A. M., dan E. J. Subadi. Hakikat Regulasi Fungsi dan Jangka Waktu Hak Pakai atas Tanah bagi Orang Asing di Indonesia. *Private Law* 5, no. 2 (2025): 619-626.

<sup>37</sup> Maharani, F., dan A. Ramli. Analisis Sosiolegal terhadap Pelaksanaan Kebijakan dan Penyelesaian Sengketa untuk Upaya Perlindungan Hukum Hak atas Tanah dan Resolusi Konflik Agraria di Rawa Pening. Dalam *Bookchapter Hukum dan Lingkungan*, 572-600. 2025.

Regulation No. 18 of 2021.

Essentially, Right of Use is a limited right to land and is not intended to create exclusive control over land, especially for foreign nationals. The granting of Right of Use to foreign nationals is actually intended as a form of limited use rights, both in terms of function and duration, so that it should not resemble the control of land rights that are intended for Indonesian citizens. However, the provisions in Government Regulation No. 18 of 2021 indicate an expansion of the character of Right of Use that has the potential to blur the conceptual boundaries between Right of Use and other land rights whose subjects are Indonesian citizens. This situation raises issues of social justice, as it grants foreign nationals relatively broader and longer-term access to land control, while the Basic Agrarian Law explicitly positions Indonesian citizens as the primary subjects in the utilization of national land. Thus, the regulation of Right of Use in Government Regulation No. 18 of 2021 can be considered not fully in line with the systematics and objectives of the UUPA as a higher norm<sup>38</sup>. In response to this, there are several recommendations that are expected to provide solutions to these issues, as outlined in the following table

Table 3: Policy Recommendations for Harmonizing Land Use Rights Regulations for Foreign Nationals

No.	Policy Recommendations	Objectives	Proposed Implementation
1.	Revision of Maximum Term	Align with the spirit of the Basic Agrarian Law and the principle of agrarian justice	Limit the total term of Use Rights for foreign nationals to a maximum of 45 years (as per Government

<sup>38</sup>Kristhy, M. E., dan A. P. Aprilla. Hak atas Satuan Rumah Susun bagi Warga Negara Asing Berdasarkan Peraturan Pemerintah Nomor 18 Tahun 2021. *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan* 7, no. 2 (2022): 498-506.

			Regulation No. 40/1996).
2.	Affirmation of the Temporary Nature of Use Rights	Prevent blurring of the concept between temporary and permanent rights.	Add an explicit clause in the Government Regulation that Land Use Rights for foreign nationals cannot be equated with HGB and are non-permanent.
3.	Restriction of Liens on Land Use Rights on HPL	Protect strategic land from de facto foreign control	Prohibit the imposition of encumbrances on Right of Use granted on Land Management Rights (HPL).
4.	Strengthening the Principle of Nationality in the Granting of Right of Use	Prioritizing the interests of Indonesian citizens in land access	Require an agrarian impact assessment before granting long-term Right of Use to foreign nationals.
5.	Periodic Evaluation Mechanism	Ensure that land continues to be used for national interests	Require a review every 10 years of land use by foreign nationals holding Right of Use.
6.	Harmonization with the Cipta Kerja Law	Maintain consistency in the regulatory hierarchy	Synchronize Government Regulation No. 18/2021 with the Job Creation Law through clearer and more limited derivative regulations.
7.	Protection of Local & Customary Community Rights	Prevent agrarian conflicts and access inequality	Require public consultation and indigenous community approval before granting land use

			rights in certain areas.
8.	Data Transparency and Reporting	Promote government accountability in land management	Establish an open data system related to the granting of land use rights to foreign nationals.

Source: Researcher Analysis, 2026

### C. The Legal and Implementational Impact of the 80-Year Term on the Protection of Indonesian Citizens' Rights to Land, Considering that There are Foreign Nationals Who Have Used Their Right of Use after the Enactment of Government Regulation No. 18 of 2021

The 1945 Constitution of the Republic of Indonesia explicitly stipulates that the fundamental basis of Indonesia is law, or in other words, Indonesia is a country based on law. This is further reinforced by the third amendment, specifically in Article 1 paragraph (3), which affirms Indonesia's identity as a country based on law. The consequence of enforcing the rule of law is the obligation to improve public welfare, one of which is through the protection of individual land ownership rights, which are an integral part of fundamental human rights.<sup>39</sup> The constitutional basis for the enactment of the National Agrarian Law in Indonesia stems from "Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This fundamental provision explicitly states that the earth, water, and natural resources contained therein are under the control of the state. Furthermore, this control must be utilized as much as possible for the prosperity and interests of the people."<sup>40</sup>

<sup>39</sup>Ali, Muhammad, Fauzie Yusuf Hasibuan, Idzan Fautanu, dan Anris Nazaruddin Halim. The Ideal Construction of Legal Ownership of Land Rights in the Administrative System of the National Land Agency. *International Journal of Science and Society* 4, no. 4 (2022): 375-387.

<sup>40</sup>Widiyono, Try, dan Md. Zubair Kasem Khan. The Legal Philosophy and Justice Values in the Acquisition of Land Rights in Indonesia: A Normative Legal Research. *International Journal of Law Reconstruction* 6, no. 2

This control is often referred to as State Control Rights, whereby land becomes an object of state control, the regulation of which is within the authority of the state and for the greatest prosperity of the people. The state thus does not own land absolutely, but exercises control over land for the public interest<sup>41</sup>. However, when this authority is exercised through the granting of land use rights to foreign nationals for a very long period of time, namely up to 80 years, a shift in the meaning of state control becomes inevitable. Although normatively the land remains under state control, factual control by foreign subjects for a period resembling permanence can blur the line between public control by the state and private control by rights holders, raising concerns about the weakening of state sovereignty over land.

Concerns about the negative impact of the policy to extend the term of Right of Use are not merely theoretical predictions, but have found relevance in the reality of implementation in the field. Based on developing data and reports, the enthusiasm of foreign nationals to take advantage of this provision shows a significant upward trend.

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) has recorded an increase in Land Use Right applications by foreign nationals following the issuance of Government Regulation No. 18 of 2021. Based on reports in various mass media, areas with high economic and tourism potential such as Bali, Greater Jakarta, Batam, and several special economic zones (KEK) have become the main destinations for Use Rights applications by foreigners. In Bali, for example, the high interest of foreigners in residential properties has been directly proportional to the increase in the number of Use Rights certificates issued. According to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2021, foreigners can own

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(2022): 278-298.

<sup>41</sup>Aji, B. S. *Pembatasan Hak Menguasai Negara atas Tanah dalam Pengadaan Tanah untuk Kepentingan Umum oleh Pemerintah*. Skripsi, Universitas Mataram, 2013.

residential houses or dwellings in the form of landed houses and flats (rusun) with certain land status requirements, with a maximum land area of 2,000 square meters for landed houses and a minimum price set according to the zone.<sup>42</sup>

Statements from officials at the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) also confirm that there is considerable interest among foreign nationals in applying for Right of Use. Director General of PHPT at the Ministry of ATR/BPN, Suyus Windayana, stated that foreign nationals are granted easy access to home ownership on the condition that they have a passport and visa, unlike the previous regulation which required a KITAS (Temporary Stay Permit)<sup>43</sup>. This certainly makes it easier for foreign nationals to obtain Right of Use in Indonesia. This phenomenon confirms that the provisions in Government Regulation No. 18 of 2021 are not dead, but have been utilized and have implications for the de facto control of land by foreign nationals for a very long period of time. While under Government Regulation No. 40 of 1996, foreign nationals could only control land for a maximum of 45 years, under the new regulations, control can last up to 80 years, a duration that is close to permanent.

A crucial aspect that needs to be highlighted is the possibility of imposing a mortgage on land use rights established on state-owned land or HPL. The provisions of Article 60 paragraph (1) of Government Regulation Number 18 of 2021 give land use rights the same status as other land rights in debt guarantee mechanisms. Thus, there is an opportunity for foreigners to control land in Indonesia for a fairly long period of time through these Right of Use. On the one hand, this Right of Use with a very long term can indeed have a positive impact, especially in the economic sector. As a developing country, Indonesia does need investment flows

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<sup>42</sup>Peraturan Menteri ATR/Kepala BPN Nomor 18 Tahun 2021 tentang Tata Cara Penetapan Hak Pengelolaan dan Hak Atas Tanah.

<sup>43</sup>Aisyah Sekar Ayu Maharani dan Hilda B Alexander, "Meski Didukung Regulasi, Realisasi Kepemilikan Hunian WNA Masih Rendah," Kompas.com, 4 Agustus 2023.

to drive economic growth and increase national income. In this context, granting a sufficiently long Right of Use period can be understood as an effort by the government to attract investors and provide legal certainty for investors.<sup>44</sup> However, in reality, the government, as the holder of state control rights, often makes development policies that are not always urgent or fully in line with the needs of the community. This can very likely cause social resistance, especially when land control is allocated for certain interests that do not directly benefit the wider community.<sup>45</sup> The increasing number of foreigners using long-term land use rights raises a fundamental question: what form of legal protection is available for Indonesian citizens from this policy? Based on normative and implementative legal analysis, there are at least three protection challenges that need serious attention.

First, the potential for limited access to productive land for Indonesian citizens. With a term of 80 years and the ability to encumber Right of Use with a Mortgage (Article 60 paragraph (1) of Government Regulation No. 18/2021), foreign nationals are not merely “using” the land, but economically “controlling” it. Land in strategic locations will tend to follow global market prices, rather than the economic capacity of the local community. As a result, Indonesian citizens, especially those from the lower-middle class, will find it increasingly difficult to access land in areas of high economic value because it has been “locked up” by foreign capital holders for a period of nearly a century. This contradicts the principle of agrarian justice, which requires that land be used for the greatest prosperity of the people, not for the greatest profit of foreign capital.

Second, the potential for agrarian conflicts with local and indigenous communities. In practice, much of the land subject to foreign nationals' land use rights was previously

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<sup>44</sup>Rambi, S. M. K., N. L. Lengkong, dan M. M. M. Setlight. Kajian Hukum Hak Pakai atas Tanah bagi Warga Negara Asing di Indonesia dalam Meningkatkan Investasi. *Lex Administratum* 12, no. 2 (2024): 7.

<sup>45</sup>Nasrudin, N., N. Nursari, dan J. Jamaludin. Memahami Status Tanah di Indonesia antara Hak Milik dan Hak Menguasai Negara. *Qanuniya: Jurnal Ilmu Hukum* 2, no. 2 (2025): 61-75.

controlled by or served as a source of livelihood for local communities, including indigenous communities. Economically disadvantaged groups with limited access to formal legal systems often face difficulties in defending their ancestral land rights when confronted by foreign investors with capital and power.

This phenomenon has surfaced in various regions, one of which is Bali. Bali Governor Wayan Koster even formed a special inter-agency team to investigate illegal businesses run by foreigners in Bali after receiving a series of complaints from the community and local MSME actors regarding the rampant domination of the tourism business by foreigners. Governor Koster emphasized, "Bali must not become a free market that kills its own people."<sup>46</sup> He revealed that in Badung alone, there are around 400 car rental and travel agency business licenses controlled by foreigners, many of whom do not have offices and do not live in Bali, but are still able to operate. These illegal business practices by foreigners not only violate business ethics but also create inequality and exacerbate local economic degradation<sup>47</sup>. This demonstrates that concerns about foreign dominance are not unfounded.

Third, the role of the state in ensuring balance. In the concept of State Control Rights, the state must not be neutral or passive. The state must actively create a balance between investment interests and the protection of citizens' rights. The principle of equality before the law is not sufficiently interpreted formally by treating all legal subjects equally, but must be interpreted substantively as the state's obligation to build equality, including by providing special protection to groups that are in a weaker position.<sup>48</sup>

The government has attempted to limit foreign ownership of property by setting minimum prices and land area restrictions, as stipulated in Decree of the Minister of

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<sup>46</sup>"Gubernur Koster bentuk tim berantas bisnis WNA ilegal," ANTARA News, 1 Juni 2025.

<sup>47</sup>"Gubernur Bali Bentuk Tim Khusus Usut Usaha Ilegal Milik WNA," Tribrata News Polri, 2 Juni 2025.

<sup>48</sup>B. Susanti, "Problem Hak Menguasai oleh Negara," Sekolah Tinggi Hukum Indonesia Jentera, 2025.

Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1241/SK-HK.02/IX/2022 on price restrictions for landed houses and flats for foreigners. However, these restrictions focus more on formal aspects and do not address the substantial issues of potential agrarian conflicts and unequal access. Without a strong commitment to protecting the rights of local communities, regulations that are normatively intended to encourage development have the potential to erode the state's sovereignty over land and neglect the fulfillment of citizens' constitutional rights.<sup>49</sup>

Therefore, the various policy recommendations as outlined in Table 3 are urgent to consider. Restrictions on mortgage rights on land use rights above HPL, strengthening the protection of local and indigenous communities, and the obligation to conduct an agrarian impact analysis before granting long-term land use rights to foreigners are concrete forms of protection that must be provided by the state. Thus, the spirit of attracting investment does not have to sacrifice the principles of social justice and national sovereignty over land. In short, these implications can be illustrated in the following table

Table 4: Legal Implications of the 80-Year Term for Foreign Nationals

Dimension of Analysis	Positive Implications	Negative Implications
Legal Certainty & Investment	Increases the attractiveness of foreign investment	Potentially creates dependence on foreign capital
Social Justice		Widening the gap in land access between

<sup>49</sup>N. Nasrudin, N. Nursari, dan J. Jamaludin, "Memahami Status Tanah di Indonesia antara Hak Milik dan Hak Menguasai Negara," *Qanuniya: Jurnal Ilmu Hukum* 2, no. 2 (2025): 61–75.

		Indonesian citizens and foreign nationals
State Sovereignty over Land		Long-term de facto control by foreign nationals risks eroding sovereignty
Compliance with the Basic Agrarian Law	Filling technical normative gaps	Not in line with the spirit of nationality and the temporary nature of Right of Use
Agrarian Stability		Potential to trigger agrarian conflicts with local communities

Source: Researcher Analysis, 2026

Based on the table, there are still positive implications from the implementation of the 80-year right of use for foreign nationals, although they are still not comparable to the more numerous negative implications. Therefore, it is still necessary to evaluate and harmonize Government Regulation No. 18 of 2021 with the Basic Agrarian Law so as not to erode the spirit of nationalism in the Basic Agrarian Law, because the many negative implications that have occurred show losses that are certainly felt by Indonesian citizens themselves, which is contrary to the principle of nationalism.

#### D. Conclusion

Based on an analysis of the term of Use Rights for Foreign Nationals, it was found that the policy change from a maximum of 45 years in PP No. 40 of 1996 to 80 years in Government Regulation No. 18 of 2021 is based on economic rationality within the framework of the Job Creation Law, namely to increase investment, provide legal certainty for foreign investors, catch up with the competitiveness gap with

neighboring countries such as Malaysia and Thailand, and fill the technical norm gap regarding the duration of Land Use Rights. Hierarchically, this stipulation is formally valid because the Basic Agrarian Law as *lex generalis* does not regulate specific years. However, from a substantial perspective, this policy has the potential to be inconsistent with the philosophical spirit of the Basic Agrarian Law, which places Indonesian citizens as the primary subjects of national land ownership and characterizes Land Use Rights as temporary and limited usage rights for foreign nationals. These concerns are reinforced by the realities of implementation on the ground. Data shows an increase in interest and realization of Right of Use applications by foreign nationals after the enactment of Government Regulation No. 18 of 2021, especially in strategic areas such as Bali and special economic zones. This phenomenon poses serious challenges to the protection of Indonesian citizens' rights, including: (1) the potential for increasingly limited access to productive land for Indonesian citizens due to long-term *de facto* control by foreign nationals, (2) the potential for agrarian conflicts with local and indigenous communities whose land rights have been marginalized, as reflected in the rampant illegal activities of foreign nationals in Bali, which has prompted the formation of a special monitoring team by the Bali Provincial Government, and (3) the need for the state to play an active role in creating a balance between investment interests and the protection of citizens' constitutional rights.

On that basis, regulatory harmonization has become an urgent matter that cannot be delayed. A review of more moderate time limits, such as the 45-year standard previously stipulated in Government Regulation No. 40 of 1996, as well as strengthening protection mechanisms for Indonesian citizens through restrictions on mortgage rights, agrarian impact analysis, and public consultation, is deemed necessary to maintain a balance between legal certainty for investors and protection of the principles of national agrarian justice, state sovereignty over land, and protection of long-term national interests.

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