

Juridical analysis of legal protection for the implementation of option agreements for foreign citizens (foreign nationals) in apartment ownership (research study: Apartments in Batam City

Meily Ferawati¹, Irpan Husein Lubis², Erniyanti Erniyanti³

Batam University, Batam, Kepulauan Riau, Indonesia^{1,2,3}

irpanhusein42@gmail.com², erniyanti@univbatam.ac.id³



Article History

Received on 17 May 2025

1st Revision on 21 June 2025

Accepted on 25 June 2025

Abstract

Purpose: This study examines the legal protection of option agreements used by foreign nationals (FNs) to acquire apartment ownership in Batam City. It evaluates the regulatory framework, practical implementation, challenges, and the extent to which such agreements provide legal certainty for both developers and FNs.

Methodology: A normative juridical approach was combined with a socio-legal method. Secondary data were obtained from legislation, legal literature, and jurisprudence, while primary data were gathered through interviews with notaries, government officials, developers, and foreign buyers in Batam.

Results: The findings reveal that option agreements, though widely applied, lack explicit regulation in Indonesian law. Their legal force relies on the contractual freedom principle under the Civil Code, making them valid but weak in providing ownership rights. In practice, they are often used as alternatives to bypass restrictions on foreign ownership, but this creates potential legal uncertainty, especially in cases of default, regulatory changes, or disputes.

Conclusion: Option agreements serve only as contractual instruments and fail to provide comprehensive legal protection or full ownership rights for FNs under Indonesian agrarian law. Clearer statutory provisions are required to enhance certainty and prevent abuse.

Limitations: The research is limited to Batam City and does not fully capture variations across other regions. Data on disputes and enforcement are also limited.

Contribution: This study identifies regulatory gaps in option agreements and emphasizes the need for government intervention through clearer policies, offering recommendations for policymakers, land agencies, and notaries to enhance investor protection, legal certainty, and national sovereignty.

Keywords: *Apartment, Option Agreement, Legal Protection*

How to Cite: Ferawati, M, Lubis, I. H. & Erniyanti. (2025). Juridical analysis of legal protection for the implementation of option agreements for foreign citizens (foreign nationals) in apartment ownership (research study: Apartments in Batam City. *Annals of Justice and Humanity*, 4(2), 181-192.

1. Introduction

Countries strive to improve the welfare of their people. One of the efforts to enhance welfare is through economic development, which is an essential part of national development aimed at improving the well-being of the people. Economic development is a critical objective for the Indonesian government

(Merta, Utama, Budhi, & Yasa, 2016). As a developing country, the government has made various efforts, one of which is through the growth of businesses in the housing and settlement sectors, or what is now commonly known as the property industry.

The property business is currently experiencing significant growth in Indonesia. This is due to the increasing demand for housing as the population increases. As the demand for housing near urban activity centers increases, vertical housing development, commonly known as apartments, has become prevalent in large cities across Indonesia. Most Indonesians are still more inclined to own landed houses rather than choosing apartments because of the limited land available for settlements, making it difficult and expensive to obtain. The limited availability of strategic land in urban areas has led many developers to race to build properties, such as apartment buildings (Pratomo, Samsura, & van der Krabben, 2020). In the construction process, attention is paid to aspects such as legal certainty in land ownership and security in its use, environmental sustainability, and creating a comfortable, complete, harmonious, and balanced living environment (Harsono, 2018).

Apartments are buildings that consist of separate units that can be used and inhabited independently, and owned individually, including other parts of the building and the land on which the building stands, which is collectively owned by the individual unit owners (Isradjuningtias, 2017; Sihotang, 2016). The development of apartments is strongly supported by the government, which has introduced policies allowing foreign nationals to own property in Indonesia. This aligns with the increase in the number of foreigners in Indonesia due to foreign investors coming into the country as a result of the continuing global economic globalization. Many of these foreigners work in Indonesia for extended periods or eventually settle here, making housing a necessity (Butar-Butar & Turisno, 2022).

The development of apartments is no longer limited to the capital city but has expanded to other large cities, such as Batam. Batam is a strategic region in Indonesia that attracts foreign investors, particularly in the property sector. Located in the Riau Islands Province near Singapore, Batam is a Free Trade Zone (FTZ), making it an attractive city for property investment (Lorenza & Wargenegara, 2022). This has led to many property developers investing in apartment buildings in Batam, with a significant portion of apartment ownership being held by foreign nationals. The increase in foreign nationals conducting property transactions in Batam has led to the use of alternative agreements, such as Option Agreements, to secure property rights. The implementation of option agreements for foreign nationals as apartment owners in Batam raises questions about their legal standing, legal protection for apartment owners, and the impact on legal certainty in foreign property investments. This study aims to analyze the legal aspects of Option Agreements for foreign nationals purchasing apartments in Batam. This study also focuses on the compatibility of legal certainty theories and the legal implications for the parties involved (Gaol, 2018).

2. Literature review

2.1. Definition of Agreement

Article 1313 of the Civil Code defines an agreement as an act in which one or more individuals bind themselves to one or more other individuals. The word "persetujuan" (agreement) is a translation of the Dutch word *Overeenkomst*, which is also commonly translated as "agreement." Some argue that an agreement is not the same as a "contract." (Lubis, 2021) A contract is translated from *Overeenkomst*, while "persetujuan" is derived from *toestemming*, interpreted as *wils-overeenstemming* (agreement of will). According to the commonly held opinion (*communis opinio doctorum*), an agreement is a legal act based on mutual consent that creates legal consequences. According to Subekti (2018), an agreement is an event where one person promises another or where two parties promise to do something. Setiawan (1987) states that an agreement is a legal act where one or more people bind themselves or mutually bind themselves to one or more other parties. Sofwan (2024) argues that an agreement is a legal act where one or more individuals bind themselves to one or more others.

2.2. Concept of Land Ownership Rights in the Republic of Indonesia

The concept of land ownership rights in Indonesia is guided by Article 33, paragraph (3) of the 1945 Constitution, which emphasizes that the control of land, water, and the natural resources contained

within them is for the greatest prosperity of the people. The Basic Agrarian Law (UUPA), enacted on September 24, 1960, is based on Pancasila and Article 33, Paragraph (3) of the 1945 Constitution. This law aims to overhaul the previously existing dualistic and individualistic agrarian systems. This adjustment is fundamental because it involves legal structures, concepts, and content that align with the interests and needs of the people according to the demands of the time (Astuti, 2015; Tobing, Praptono, Hestiono, & Pattinasarany, 2024). In addition, Indonesian regulations govern the opportunity for foreigners to own residential property in Indonesia, as regulated by Government Regulation (PP) No. 41 of 1996. These regulations complement each other and govern foreign nationals' rights to own land and buildings in Indonesia. Specifically, PP No. 41 of 1996 regulates the rights of foreign nationals to own buildings on land that is not their own. There are several other regulations related to foreign nationals' rights to control land and/or buildings in Indonesia that are specifically addressed (Arsensius, 2023).

2.3. Regulation of Foreign Ownership of Land in the Republic of Indonesia

Based on the above provisions, they serve as guidelines to understand how far regulations on foreign nationals' ownership of land will be implemented in the future. This reference framework generates other related regulations (Ashfiya Nur, Ahmad Muhamad Mustain, Latifah, Annada Ashfa, & Neysa Kunthi Cahya, 2024). To analyze the legal provisions concerning foreign nationals' control of land in Indonesia, a guide must be established. In accordance with the 1945 Constitution of Indonesia, which serves as the country's foundation, the country controls land, water, and natural resources for the prosperity of its people. The legal relationship takes the form of ownership rights. However, foreign nationals and foreign legal entities with representative offices in Indonesia may only be granted the right to use the land. Violations of these rights and their legal consequences are regulated under Article 26 (2) of the UUPA (Nisa, 2023; Wijayani, 2018). The legal relationship between foreign nationals or foreign legal entities and land in the form of the right to use is further explained in Government Regulation No. 40 of 1996 on Land Use Rights, Building Use Rights, and the Right to Use Land. During the rapid growth of the housing and property industry in the 1990s, the idea of marketing property to foreign nationals emerged. Consequently, Government Regulations No. 40 and No. 41 of 1996 were issued simultaneously on June 17, 1996 (Suwardi, 2017).

2.4. Regulation of Land Ownership by Foreign Nationals through Option Agreements

State authority over land is limited by the rights associated with it, meaning that the extent to which the state allows landowners to use the land defines its power. The concept of state control is related to the state's role in advancing public welfare, a principle found in welfare states. In a welfare state, individual rights are recognized despite limited land, water, and natural wealth. According to Harsono (2018), individual rights to use land are granted, meaning the right to control, use, and/or benefit from certain aspects. Foreign nationals land control must be based on legal acts or events. Legal acts granting foreign nationals the right to control land in Indonesia include state or government authorization, sales, agreements granting rights from landowners, and lease agreements for buildings, among others. Inheritance is the legal event that grants them rights.

2.5. Forms of Agreements in Foreign Nationals' Land Control

The concept of land control is fact-based and emphasizes reality at a given time. Normatively, this concept is temporary, meaning that further legal certainty is required regarding the relationship between the controlling party and the property (Budiono, 2006). A nominee is a person appointed or designated. Foreign nationals use nominees to secure ownership rights over land, as they are not allowed to directly own land in Indonesia. Thus, foreign nationals employ nominees to fully enjoy the benefits of the land. In practice, within the scope of Notary Services and Land Deed Officials (PPAT), using nominees is no longer taboo (Dharma, Budiarta, & Ujianti, 2022). Several notaries in Batam use nominees to provide legal protection and comfort to their clients. In practice, foreign nationals bypass legal restrictions to control ownership through various methods, typically by creating a package agreement between the foreign national as the proxy holder and the Indonesian national as the grantor. This agreement gives foreign nationals the authority to control land and perform legal acts regarding it, which is prohibited by the UUPA. The involved parties have rights and obligations, as stated in the agreement. The Indonesian national's name is only used to purchase land from the landowner, with all

financing provided by foreign nationals. A breach of contract in a land sale transaction has legal consequences for both parties involved (Prakoso, Nabila, & Samosir, 2025; Vandini, 2025).

2.6. Land Ownership by Foreign Nationals through Agreement Instruments

Subekti (2018) Agreements that regulate the legal relationships between foreign nationals and Indonesians are outlined in Book III of the Civil Code (KUHPer). In contractual legal relationships, each party has reciprocal rights and obligations. One party has the right to demand something from the other, and the other party must fulfill that demand, and vice versa. The creditor is entitled to make the demand, while the debtor must fulfill the demand. The object of the demand is called the prestasi (performance), which refers to the subject of the agreement, that is, something the creditor demands from the debtor or what the debtor must provide to the creditor. Prestasi refers to assets that are measurable or can be valued in money

2.7. Assumptions of the Study

In writing this thesis, the author followed the writing guidelines that set assumptions to shape the form and direction of the arguments. Assumptions are considered guesses accepted as the foundation for thinking and are assumed to be true. Therefore, to assume means to hypothesize, estimate, and speculate on the outcome. Based on this, the thesis presents assumptions related to the following objects of study (Arikunto, 2020). The Option Agreement between sellers and buyers often fails to meet the price limits set by the government. The name of the holder on the Land Ownership Certificate for apartment units cannot be transferred to the buyer. This will lead to complex legal issues, particularly when developers go bankrupt, regarding legal protection for foreign nationals who purchase apartment units. The Option Agreement between sellers and buyers has numerous legal issues when the buyer is a foreign national who is either legally incompetent or deceased. This has implications for guardians or heirs who attempt to claim the Land Ownership Certificate of the apartment unit, causing the developer to verify the validity of the information from the guardian or heirs and to investigate the legal status of the buyer's incapacity or death.

3. Methodology

3.1. Type of Research

This research uses a normative legal research method, which refers to legal norms in relation to the facts presented, aiming to change the situation and offer potential solutions to concrete societal issues (Ibrahim, 2006). The research also analyzes the regulations governing foreign nationals' property ownership and the application of the Option Agreement. This study uses normative legal research, focusing on library data. In normative legal research, the literature serves as primary data and is categorized as secondary data (Marzuki, 2013).

3.2. Research Approach

The research approach is a problem-solving process through specific stages to achieve the research objectives. The author uses a juridical-empirical approach, observing and studying the legal aspects related to the issue while gathering data and information. In other words, the research involves studying legal facts from documents, books and legal literature. The author analyzes legal provisions, regulations, and literature and examines real-world cases of the Option Agreement for foreign nationals' apartment ownership in Batam. This study uses a statutory approach to analyze laws and regulations related to the legal issues at hand.

3.3. Research Location and Data Sources

The sources of data used in this study are (Soekanto & Mamudji, 2023):

a. Research Location

The research was conducted in Batam, specifically focusing on apartments in the city, based on data relevant to this thesis.

b. Data Sources

This study combines normative legal research (library research) and observational research. The data and sources used in this study are primary and secondary. Primary data were obtained directly

from the field, involving relevant parties related to the research object. This data was collected through field research on apartments in Batam, with interviews, both direct and written, with respondents connected to the apartments in Batam. Secondary data refer to pre-existing, processed data, which means that the data are well-organized in the literature, regulations related to the research object, or other written sources. Library literature is essential for obtaining secondary data, which cannot be separated from the objects or issues being studied or from the previously formulated research problem.

3.4. Data Collection Techniques

Data are a crucial component in research for the subsequent analysis of research results. Sugiyono states that data collection techniques are the most critical step in research, as the primary goal is to gather data. Without understanding the data collection techniques, the researcher will not obtain data that meets the required standards. The data collection methods used in this study are as follows:

a. Document Study

Document study is a data collection technique conducted through written sources using content analysis, which involves analyzing documents obtained in the field that are relevant to the research question. In this case, the author examines documents related to foreign nationals' ownership of several apartments in Batam.

b. Interviews

Before analyzing the data, the collected data were processed by verifying the oral data to gather information from sources directly related to the research problem in the field. The interviews were semi-structured, and in addition to asking detailed questions, the author also asked follow-up questions to further explore the topic.

3.5. Data Analysis

Before performing data analysis, the collected data were processed by verifying both the field findings and the data from reading materials and legal regulations. Data processing was performed through editing, where the researcher checked the completeness of the received answers. This involves reorganizing, reviewing, and verifying the findings to ensure that the research is well-structured, systematic, and conclusive. Once the data are processed, the next step is to analyze the data using qualitative analysis, where both primary and secondary data are studied and then elaborated in systematically arranged sentences.

4. Result and discussion

4.1. Legal Protection Regulation on the Implementation of Option Agreements for Foreign Nationals in Apartment Ownership

Land Ownership by Foreign Nationals in Indonesia is regulated by law, specifically providing guidelines on land control. The right to use is understood as a right granted for specific purposes of land use or based on considerations of the land's use and/or its user, which cannot be granted with ownership, business, or building rights. In the UUPA, the Right to Use is regulated in Articles 41 to 44. The UUPA, which serves as the legal framework for agrarian matters, offers several options for land control that foreign nationals can utilize in Indonesia (Aulia & Holish, 2023). Foreign nationals' apartment ownership is legally accommodated through a condominium unit built on land with the Right to Use status, as outlined in Ministerial Regulation No. 29 of 2016 on the Procedures for Granting, Transferring, or Assigning Residential Rights to Foreign Nationals in Indonesia (Sutedi, 2012). Article 113 of Ministerial Regulation No. 18 of 2021, implementing the Omnibus Law, states that the Right to Use is granted for 30 years, with the possibility of a 30-year extension. Article 118 clarifies that after the expiration of the Right to Use or its extension, the government may renew the Right to Use for a maximum of two years after the expiration of the previous term (Hetharie, 2022).

A residence permit is necessary for foreign nationals (Chopra, Dhingra, Dhar, & Nepali) to own land in Indonesia. It allows WNA to acquire certain rights, with land and building ownership being limited to the Right to Use for a certain period. This aligns with Jeremy Bentham's Theory of Property, which focuses on individual rights to property, such as the right to control, use, and benefit from it. Bentham argued these rights should be regulated by law to ensure social and economic stability (Saefullah, 2024).

However, in practice, developers often use Option Agreements to attract foreign buyers. An Option Agreement is a legally binding agreement that gives one party the right (but not the obligation) to purchase an asset in the future under certain conditions. In Indonesia's Civil Code, Option Agreements are not explicitly regulated; however, the principle of freedom of contract in Article 1338 of the Civil Code serves as the basis for their legality. As long as a contract does not violate laws, public order, or morality, it is valid and legally binding.

The use of Option Agreements in property transactions by foreign nationals offers flexibility but also presents legal risks, particularly when not accompanied by supporting documents such as an escrow agreement and binding declarations (Nisa, 2023). Therefore, legal protection for Option Agreements should not solely rely on the freedom of contract principle but also on the prudential principle in civil law and consumer protection (Sjahdeini, 2011). To gain direct insight from field practice, the author interviewed Notary Andreas Timothy, S.H., M.Kn., who explained that the Option Agreement in Indonesia's legal system is part of the contract law. As its name implies, the Option Agreement is subject to general contractual provisions under the Civil Code, particularly the freedom of contract principle in Article 1338. Additionally, it refers to the provisions of Law No. 11 of 2020 on Job Creation, specifically Article 144, and other relevant regulations. Although there is no specific regulation on Option Agreements, they are recognized as legally valid as long as they do not contradict Indonesian laws.

Thus, it can be concluded that legal protection for the implementation of Option Agreements for foreign nationals in apartment ownership, although not explicitly regulated in Indonesia's positive law, can still be applied as long as it is based on general civil law principles and the freedom of contract. However, to ensure higher legal certainty and stronger protection, specific regulations or strengthened norms in sectoral regulations governing Option Agreements, especially in property transactions between local developers and foreign buyers, are needed. From the interview with Reza Khadafy, S.STP., M.P.A., Head of the One-Stop Integrated Service (Dinas Pelayanan Terpadu Satu Pintu) of Batam, it was mentioned that the Batam City Government is currently focusing on promoting investment opportunities to foreign nationals. The government is working on simplifying regulations and facilitating foreign nationals interested in investing. The Online Single Submission Risk-Based Approach (OSS-RBA) platform allows foreign nationals to set up foreign investment companies. Reza believes that these foreign investments will boost Batam's economy. In an interview with Mohammad Boyke Reza, Policy Analyst of MPR RI, he mentioned that the Indonesian Notary Association (INI) discussed with Commission 3 of the DPR RI about promoting foreign investment in property. It is hoped that the regulation on the minimum price threshold for foreign investment in the property sector will be amended, as it is less effective in practice. An interview with Hajar Aswad, the Head of Batam Immigration, revealed that the presence of foreign nationals in Batam is a significant achievement. Many of them come for tourism, and those holding KITAS/KITAP often choose to buy property, which positively impacts sectors such as food, property and transportation.

The legal protection regarding the implementation of Option Agreements for foreign nationals' apartment ownership in Indonesia is strictly regulated by the Basic Agrarian Law (UUPA) and its implementation. According to Article 42 of the UUPA, foreign nationals can only be granted the Right to Use and the Right to Lease, not ownership rights, on land. Article 52, paragraph (1) of Law No. 1 of 2011 on Housing and Residential Areas (as amended by Law No. 6 of 2023) states that foreign nationals can own apartments with leasing or usage rights. The main requirement for foreign nationals to own apartments with the Right to Use or Lease is the possession of valid immigration documents in accordance with the regulations. Additionally, Government Regulation No. 18 of 2021 clarifies that foreign nationals who own apartments with the Right to Use status can benefit from these regulations and rent their apartments. Based on the above explanation, the regulation of Option Agreements in Indonesia remains within the realm of private law, without clear formal regulatory foundations. Legal protection for foreign nationals relies heavily on the formulation of clauses in agreements and the good faith of the parties. The government still has the responsibility to provide legal certainty through sectoral regulations or derivatives to accommodate this practice, particularly in investment areas such as Batam.

4.2. Implementation of Legal Protection on the Enforcement of Option Agreement for Foreign Nationals in Apartment Ownership

The implementation of legal protection for the Option Agreement for foreign nationals is highly influenced by how the agreement is structured and executed. In Batam, based on data and interviews with developers and notaries, it was found that most Option Agreements are drafted in the form of private agreements between foreign nationals and developers, with the notary acting as a witness or drafter of the agreement (Ridhogusti & Kurniati, 2024). The implementation of legal protection for Option Agreements for foreign nationals in apartment ownership in Indonesia, particularly in Batam, faces various complex issues and has not provided legal certainty for the parties involved. In practice, property developers often use Option Agreements as an alternative solution to accommodate foreign nationals' desire to own property in Indonesia, given the constitutional restrictions on land ownership, which can only be owned by Indonesian citizens. However, due to the absence of specific regulations explicitly governing the mechanism, limitations, and legal force of the Option Agreement, its implementation tends to rely on the initiative and interpretation of the parties, as well as the notary and land deed officials (PPAT) involved.

In general, legal protection in the context of implementing Option Agreements remains private and contractual, relying on good faith and the legal force of the agreement made in accordance with Article 1320 of the Civil Code. However, due to the lack of specific provisions explicitly recognizing or prohibiting Option Agreements in agrarian and land regulations, the legal position of foreign nationals in these agreements is weak. When defaults, violations, or disputes occur, enforcement of legal protection can only be done through litigation (Hernández-Torrano & Courtney) or non-litigation (mediation/arbitration), which often takes a long time and risks not providing substantive justice for foreign nationals, especially if the clauses in the contract are not drafted in a balanced manner. In practice, developers often offer foreign nationals the option to rent an apartment unit for a specific period (usually 20-25 years) with a promise of an extension or a right to repurchase once the foreign nationals obtain the appropriate residence status. This creates an illusion of ownership, even though there is no actual transfer of ownership rights. This is where potential legal problems arise, particularly when foreign nationals cannot exercise their option rights due to government policy changes or developer defaults. Based on an interview with Mr. Desmond, Staff Finance at Harbour Bay Apartments, it was found that the apartments have been operating since 2018, with one tower consisting of 301 units. Around 30-40% of the residents are foreign nationals, some of whom hold KITAS/KITAP, with a residency status valid for a maximum of 6 months before renewal. The practice of using Option Agreements has been adopted by unit owners who are foreign nationals, and this has reached the stage of signing the Deed of Sale and Purchase (AJB).

Additionally, from the perspective of consumer protection, there is a lack of policies that actively protect foreign nationals (FNs) as apartment buyers, especially if they fall victim to one-sided or detrimental agreements. Referring to international consumer protection principles, including the United Nations Guidelines for Consumer Protection (UNGCP), every country is required to ensure that all consumers, including foreigners, have access to accurate information, fair dispute resolution, and protection against dishonest practices. However, the implementation of these principles in Indonesia has not been optimal to date. Based on the above background, it can be concluded that legal protection regarding the enforcement of option agreements for FNs in apartment ownership has not been effective and tends to fail to provide legal certainty. Therefore, a more progressive legal reform effort is needed in the future, through special regulations on option agreements in the Basic Agrarian Law (UU Pokok Agraria) or its derivatives, as well as active roles from local governments, notaries, and developers in providing education and transparent information to FNs who wish to own property legally in Indonesia. Referring to the International Agreement Theory proposed by John Bassett Moore, the theory examines international agreements and how countries regulate their legal relations with other nations through binding treaties (Jessup, 2022; Mahfud & Djohan, 2024).

Legal protection for option agreements concerning FNs in apartment ownership in Batam is also influenced by local practices that have developed informally. Batam, an industrial and international trade area with Free Trade Zone status, tends to be open to foreign transactions, including in the property

sector. Many developers in Batam openly and covertly offer option schemes or semi-ownership arrangements to FNs. This is due to strong market demand, where foreign buyer interest is high, while regulatory limitations fail to provide flexible legal space. Such practices create legal gaps that may lead to conflicts in the future, as not all parties understand the differences between the legal status of land rights and property unit ownership rights. An option agreement falls under the category of unnamed contracts because it is not explicitly regulated under Indonesian law, including the Civil Code (KUHP). Foreign nationals frequently use option agreements to secure apartment ownership.

To optimize legal protection, policy intervention in the form of implementing regulations (either ministerial or regional regulations) is necessary to specifically regulate the procedures for using option agreements. These regulations should ideally provide clear limitations on the form, terms, and prohibitions of option agreements, as well as enforcement mechanisms for noncompliance. Furthermore, training for notaries and land officials is required to better understand the dynamics of cross-border property laws, including their impact on the national legal system. However, the Batam local government can play an active role in establishing a mediation forum between FNs and developers as a form of preventive legal protection to prevent prolonged disputes. In an interview with Aihisandru Sebastian Manurung, an academic and lawyer at the State University of Jakarta, he stated that an option agreement is part of the freedom of contract, as stipulated in the Law on Notary Affairs (UUJN). This is crucial to prevent legal circumvention, including risks such as money laundering. Increasing foreign investment is hoped to contribute to Indonesia's economic growth as one of the country's foreign exchange contributors.

4.3. Barriers and Solutions for Legal Protection Regarding Option Agreements for Foreign Nationals in Apartment Ownership

The ownership of land rights highlights that land ownership is an issue that requires strict legal protection. Legal protection aims to ensure that the correct status of land ownership is given to individuals through a stringent selection process. Indonesia, a developing country, has abundant natural resources. Problems arise when foreign nationals (FNs) control land, whether through foreign investment or mixed marriages between FNs and Indonesian citizens (WNI). Article 1313 of the Civil Code states that a contract is an act in which one or more persons bind themselves to transfer an object, and the other party pays the agreed-upon price (Haspada, 2018). Legal certainty can only be answered normatively based on applicable laws and regulations. However, normative legal certainty exists when regulations are made and enacted clearly, logically, and without causing doubts, and are consistent with other norms, avoiding conflicts of norms arising from uncertainty (Halilah & Arif, 2021). These norm conflicts occur because, as clearly stated in Article 9, paragraph (1) of the Basic Agrarian Law (UUPA), "Only Indonesian citizens may have full rights over the land, water, and airspace, within the limits prescribed in Articles 1 and 2," and Article 21, paragraph (1) of the UUPA states, "Only Indonesian citizens may hold property rights," while foreign nationals are only entitled to use rights, building use rights, and business use rights.

In an interview with Mr. Andrew Giovani Alexander Pelealu, the Legal Head Section at Nuvasa Bay Apartment, it was noted that during the implementation of the Sale and Purchase Agreement in 2022, there was a change in the regulation regarding the price limit for ownership, which was previously set at IDR 750,000,000 (seven hundred fifty million Rupiah) but has now been revised to IDR 1,000,000,000 (one billion Rupiah). Many unit owners were concerned about this issue, often complaining about the guarantee of ownership status. As a solution, the informant advised the government to address legal regulations to provide better certainty and legal protection for investors or apartment unit owners, particularly foreign nationals (FNs). The informant stated that the government is expected to maintain consistency in the established regulations to avoid sudden changes in the law.

Further insights from an interview with Ms. Wilsadori Harahap, Customer Relations at Aston Hotel & Residence, revealed obstacles in implementing option agreements due to country-specific differences and certain reasons that need to be adjusted to specific interests. As a solution, the informant suggested that the government should align the legal requirements for foreign nationals' apartment ownership with actual demand levels. According to the developer, overly rigid regulations could limit foreign investors'

interest in Indonesia. For example, the informant pointed out that in the apartment they manage, there is a foreign national who owns multiple units, up to four units. This condition indicates a high level of investment interest, leading developers to believe that the government needs to adjust its policies to maintain foreign investment while ensuring clear legal protection for unit owners.

Interviews with Mr. Kim Yong Chol, the owner of Meisterstadt Apartments in Batam, indicated that investing in Batam is attractive due to the friendly local community and excellent local cuisine. This was the main reason for his apartment purchase. He hopes that the sale and purchase deed can be made and the ownership can be transferred to his name. However, until this deed is completed, he trusts the option agreement as a basis for ownership, along with the purchase receipt to prove ownership. This situation presents a unique challenge for developers, who must comply with regulations while simultaneously safeguarding the legal interests of FNs as apartment owners. Developers often find themselves in a dilemma, seeking solutions that align with regulations while ensuring legal certainty for the unit owners.

Developers have provided several recommendations to the Indonesian government to improve legal protection for investors or apartment unit owners, especially foreign nationals. Developers hope that the government will review rules concerning price bindings, as frequently changing regulations complicate business operations. Furthermore, developers highlighted the need for clearer regulations regarding foreign ownership, especially when a unit's owner passes away, as this has yet to be comprehensively addressed in the current legal framework. Another issue requiring clarity involves mixed marriages, particularly when marriages with Indonesian citizens are not officially recorded in the Philippines. Finally, the developers emphasized the importance of ensuring legal certainty concerning the transfer of units from one foreign national to another, as current regulations on this matter remain ambiguous.

5. Conclusion

5.1. Conclusion

1. Based on Law No. 5 of 1960 concerning the Basic Agrarian Law and Law No. 20 of 2011 on Apartments, the regulation on legal protection for the enforcement of option agreements for foreign nationals (FNs) in apartment ownership in Indonesia reveals that this agreement is a legal instrument in the form of a Notarial Deed that is binding for both the developer and the consumer, who is a foreign national. When the apartment sale and purchase process occurs, the option agreement created by the notary must comply with Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 on the Position of Notary Public (UUJN). The option agreement serves as the legal basis for FNs regarding the apartments they purchase. However, this option agreement has not yet provided legal certainty in terms of apartment ownership, according to the prevailing laws in Indonesia.
2. The implementation of legal protection through the enforcement of option agreements for foreign nationals (FNs) in apartment ownership in Indonesia has yet to be fully accommodated by the option agreement itself, as there are still legal loopholes that could lead to deviations in the future. Such deviations include purchasing apartments below the minimum price allowed for FNs, as stipulated in the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 29 of 2016 concerning the Procedures for the Granting, Release, or Transfer of Property Rights for Foreign Nationals, which is regulated by Law No. 20 of 2011 on Apartments in conjunction with Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Apartment Units, and Land Registration. Therefore, the implementation of legal protection through option agreements for FNs remains limited because it does not have strong legal legitimacy as an instrument for apartment ownership, and the legal protection offered is primarily focused on contractual aspects rather than on ownership recognized by Indonesian law.
3. The obstacle to legal protection in the enforcement of option agreements for foreign nationals (FNs) in apartment ownership in Indonesia is that the option agreement cannot fully accommodate the interests of foreign nationals and clarify the rights of FNs who wish to own land and property in Indonesia. This is based on Article 21 of Law No. 5 of 1960 on the Basic Agrarian Law, which emphasizes that property rights can only be owned by Indonesian citizens, while foreign nationals are only permitted to have limited rights, such as the right to use property, as reaffirmed in Article

144 of Law No. 20 of 2011 on apartments. Thus, the option agreement only generates rights and obligations contractually between developers and foreign nationals without providing full ownership rights recognized by the positive law in Indonesia. Furthermore, there is still no specific regulation regarding the use of option agreements for foreign nationals, which leads to legal uncertainty and potential abuse, such as price speculation practices, ownership of more than one unit, or purchasing below the minimum allowed price, as per Ministerial Regulation ATR/BPN No. 29 of 2016.

5.2. Recommendations

1. Recommendations for the Government

Through this thesis, the author recommends that the government, particularly the relevant agencies in the field of land and housing, create specific regulations regarding option agreements for foreign nationals (FNs) to ensure legal certainty and better legal protection for them. The current legal ambiguity has the potential to cause legal uncertainty and disputes in the future, both for FNs as unit owners and developers. The government should draft specific regulations regarding option agreements for FNs to ensure legal certainty and protect rights. Currently, the lack of clarity regarding option agreements creates legal uncertainty and the potential for future disputes. Therefore, the author suggests that the government take the following steps: revise Law No. 20 of 2011 on Apartments, particularly Article 144, to explicitly regulate the mechanism of apartment ownership by foreign nationals through option agreements.

2. Recommendations for Relevant Agencies (BPN and Notaries)

This thesis suggests that the National Land Agency (BPN) and notaries perform oversight functions and ensure that all clauses in option agreements comply with applicable regulations. There should be strict regulation of option agreements to prevent their misuse as a form of hidden ownership, especially in the context of apartment purchases by foreign nationals. The BPN must ensure that the purchase price does not violate the minimum price provisions as regulated in Ministerial Regulation ATR/BPN No. 29 of 2016 and does not violate the number of units that can be owned, as stated in Law No. 20 of 2011 on Apartments in conjunction with Government Regulation No. 18 of 2021. The BPN should also develop a transparent administrative verification system to prevent the misuse of option agreements as a means of concealing ownership. Specifically, notaries should provide education and legal assistance to foreign nationals (FNs) regarding the legal boundaries and risks involved in the agreements they enter. Notaries should not only prepare option agreement documents but also carry out a preventive function by ensuring that all clauses in the agreements comply with the applicable laws and regulations. In addition, notaries should report to the relevant authorities if they encounter option agreements that may lead to legal action or violations.

References

- Arikunto, S. (2020). *Prosedur Penelitian Suatu Pendekatan Praktik*. Jakarta: Rineka Cipta.
- Arsensius, A. (2023). Pengaturan Hak Pakai Sebagai Objek Hak Tanggungan Atas Rumah Tinggal Warga Negara Asing. *Tanjungpura Law Journal*, 7(2), 184-210. doi:<https://doi.org/10.26418/tlj.v7i2.58807>
- Ashfiya Nur, A., Ahmad Muhamad Mustain, N., Latifah, I. a., Annada Ashfa, U., & Neysa Kunthi Cahya, L. (2024). Tunas Agraria : Implikasi Kewarganegaraan terhadap Hak Kepemilikan Tanah dalam Hukum Agraria Indonesia. *Terang : Jurnal Kajian Ilmu Sosial, Politik dan Hukum*, 1(4), 118-127. doi:<https://doi.org/10.62383/terang.v1i4.618>
- Astiti, T. (2015). Implementasi Pasal 33 Ayat 3 UUD 1945 dalam Berbagai Perundang-Undangan Tentang Sumberdaya Alam. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 4. doi:<http://dx.doi.org/10.24843/JMHU.2015.v04.i01.p05>
- Aulia, M. R. R., & Holish, A. M. (2023). Legal Aspect of Land Tenure Strategies by Foreign Nationals (Case of District of Jepara, Indonesia). *Journal of Law and Legal Reform*, 4(1), 33-44. doi:<http://dx.doi.org/10.15294/jllr.v4i1.64014>
- Budiono, H. (2006). *Asas Keseimbangan bagi Perjanjian Indonesia*. Bandung: Citra Aditya Bakti.
- Butar-Butar, K. E., & Turisno, B. E. (2022). Juridic Review of Granting Rights to Flat Units to Foreign Citizens Based on the Provisions of Legislation in Indonesia. *Awang Long Law Review*, 4(2), 409-418. doi:<https://doi.org/10.56301/awl.v4i2.454>

- Chopra, B., Dhingra, A. K., Dhar, K. L., & Nepali, K. (2021). Emerging Role of Terpenoids for the Treatment of Cancer: A Review. *Mini Reviews in Medicinal Chemistry*, 21(16), 2300-2336. doi:<https://doi.org/10.2174/1389557521666210112143024>
- Dharma, K. R. W., Budiarta, I. N. P., & Ujianti, N. M. P. (2022). Larangan penguasaan tanah oleh WNA melalui perjanjian nominee. *Jurnal Konstruksi Hukum*, 3(2), 246-251. doi:<https://doi.org/10.22225/jkh.3.2.4806.246-251>
- Gaol, S. L. (2018). Tinjauan Hukum Pemilikan Apartemen (Satuan Rumah Susun) Oleh Orang Asing/Warga Negara Asing Di Indonesia. *Jurnal Ilmiah Hukum Dirgantara*, 9(1). doi:<https://doi.org/10.35968/jh.v9i1.298>
- Halilah, S., & Arif, M. F. (2021). Asas Kepastian Hukum Menurut Para Ahli. *Siyasah: Jurnal Hukum Tata Negara*, 4(2), 56-65.
- Harsono, B. (2018). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya*. Jakarta: Djambatan.
- Haspada, D. (2018). Perjanjian Nominee Antara Warga Negara Asing dengan Warga Negara Indonesia dalam Praktik Jual Beli Tanah Hak Milik yang Dihubungkan dengan pasal 1313 Kitab Undang-Undang Hukum Perdata. *Wacana Paramarta: Jurnal Ilmu Hukum*, 17(2), 115-124. doi:<https://doi.org/10.32816/paramarta.v17i2.77>
- Hernández-Torrano, D., & Courtney, M. G. (2021). Modern International Large-Scale Assessment in Education: An Integrative Review and Mapping of the Literature. *Large-Scale Assessments in Education*, 9(1), 1-33. doi:<https://doi.org/10.1186/s40536-021-00109-1>
- Hetharie, Y. (2022). Kepemilikan Tanah Oleh Warga Negara Asing Melalui Perjanjian Pinjam Nama Sebagai Bentuk Penyelundupan Hukum dalam Hukum Perdata Internasional. *Balobe Law Journal*, 2(1), 12–20. doi:<https://doi.org/10.47268/balobe.v2i1.822>
- Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.
- Isradjuningtiyas, A. C. (2017). Faktor Penyebab Penyimpangan Tata Ruang (Studi Pembangunan Condominium) di Kota Bandung. *Veritas et Justitia*, 3(2), 437-467. doi:<https://doi.org/10.25123/vej.v3i2.2687>
- Jessup, P. C. (2022). *A Modern Law of Nations: Pengantar Hukum Modern Antarbangsa*: Nuansa Cendekia.
- Lorenza, C., & Wargenegara, D. L. (2022). A Study on Real Estate Investment Decisions in an Indonesian Free Trade Zone: A Behavioral Finance Approach. *Jurnal Akuntansi dan Bisnis: Jurnal Program Studi Akuntansi*, 8(2), 164-180. doi:<https://doi.org/10.31289/jab.v8i2.8156>
- Lubis, T. H. (2021). Hukum perjanjian di Indonesia. *SOSEK: Jurnal Sosial dan Ekonomi*, 2(3), 177-190. doi:<https://doi.org/10.55357/sosek.v2i3.250>
- Mahfud, M. A., & Djohan, N. H. (2024). The Expansion of Investor Access to Cultivation Rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia. *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, 24(2), 55-67. doi:<https://doi.org/10.30631/alrisalah.v24i2.1500>
- Marzuki, P. M. (2013). *Penelitian Hukum*. Jakarta: Prenada Media Group.
- Merta, I. B. A. A., Utama, M. S., Budhi, M. K. S., & Yasa, I. N. M. (2016). Impact of Government Expenditure, Human Capital and Regional Economic Development Performance on People Welfare in Bali Province, Indonesia. *Journal of Economics and Sustainable Development*, 7(12), 85-93.
- Nisa, A. F. (2023). Ownership of Land Rights with the Status of Property Rights by Foreign Nationals As Beneficiaries Using Indonesian Citizens. *Global Legal Review*, 3(1), 49-57. doi:<https://doi.org/10.19166/glr.v3i1.5107>
- Prakoso, G. D., Nabila, S. K., & Samosir, T. (2025). Analysis of the Validity of Notarial Deeds in Land Ownership Transactions by Foreign Nationals through Nominees based on Law No. 5 of 1960 concerning Basic Agrarian Principles. *Jurnal Akta*, 12(2), 594-600. doi:<http://dx.doi.org/10.30659/akta.v12i2.45303>
- Pratomo, R. A., Samsura, D. A. A., & van der Krabben, E. (2020). Transformation of Local People's Property Rights Induced by New Town Development (Case Studies in Peri-Urban areas in Indonesia). *Land*, 9(7), 236. doi:<https://doi.org/10.3390/land9070236>
- Ridhogusti, R., & Kurniati, G. (2024). Implications of Nominee Agreements in Land Ownership by Foreign Nationals in Bali: Case Study of Nominee Agreement in

- Decision No. 274/Pdt. G/2020/PN Dps. *Reformasi Hukum*, 28(2), 153-167. doi:<https://doi.org/10.46257/jrh.v28i2.1024>
- Saefullah, S. (2024). Transformasi Konsep Kepemilikan Harta Dalam Hukum Bisnis dan Konteks Sejarahnya. *Jurnal USM Law Review*, 7(1), 514-527. doi:<https://doi.org/10.26623/julr.v7i1.8557>
- Setiawan, R. (1987). *Hukum Perikatan-Perikatan Pada Umumnya*. Bandung: Bina Cipta.
- Sihotang, S. (2016). Implementasi Hukum Perumahan Sebagai Usaha Percepatan Pengadaan Rumah Bagi Masyarakat Yang Berpenghasilan Rendah (MBR). *De'rechtsstaat*, 2(1), 81-102. doi:<https://doi.org/10.30997/jhd.v2i1.659>
- Sjahdeini, U. R. (2011). *Kebebasan Berkontrak dan Perlindungan yang Seimbang bagi Para Pihak dalam Perjanjian*. Jakarta: Pustaka Utama Grafiti.
- Soekanto, S., & Mamudji, S. (2023). *Penelitian Hukum Normatif suatu Tinjauan Singkat*. Jakarta: Radja Grafindo Persada.
- Sofwan, M. (2024). Legal Review of Implementation of Cooperation Agreements between Agents and Distributors in Business Law Principles. *Journal Equity of Law and Governance*, 5(2), 58-64. doi:<https://doi.org/10.55637/elg.5.2.10376.58-64>
- Subekti. (2018). *Hukum Perjanjian*. Jakarta: PT Intermasa.
- Sutedi, A. (2012). *Hukum Rumah Susun*. Jakarta: Sinar Grafika.
- Suwardi. (2017). Hak Kepemilikan Tempat Tinggal bagi WNA di Bidang Properti. *Perspektif Hukum*, 17(1), 138-153. doi:<https://doi.org/10.30649/ph.v17i1.63>
- Tobing, A., Praptono, S. T., Hestiono, P., & Pattinasarany, E. B. (2024). Agrarian Reform In The Context Of Increasing Poor Peasants'access To Land Tenure In Indonesia. *Hukum Responsif*, 15(2), 279-287. doi:<https://doi.org/10.33603/responsif.v15i2.9481>
- Vandini, T. (2025). Implementasi Nominee Agreement dalam Perspektif Hukum di Indonesia. *Jurnal Pendidikan Indonesia*, 6(4), 2057-2063. doi:<https://doi.org/10.59141/japendi.v6i4.7660>
- Wijayani, N. P. T. E. (2018). Penyelesaian Sengketa Perjanjian Nominee Tentang Peralihan Hak Milik Atas Tanah Kepada Warga Negara Asing (Wna) Ditinjau Dari Pasal 26 Ayat (2) UUPA. *Jurnal Aktual Justice*, 3(2), 122-138. doi:<https://doi.org/10.47329/aktualjustice.v3i2.538>