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Granting the Right of Use on Freehold Land to Foreign Citizens in Badung Regency

Ni Kadek Sumiati^{1*}, I Made Suwitra², Nengah Renaya³

¹dekniknik@yahoo.co.id, ²putracahayalawoffice@gmail.com, ³drs_renay@yahoo.co.id

Master of Notarial Law, Postgraduate Program, Universitas Warmadewa Denpasar

*Corresponding Author: Ni Kadek Sumiati

Email: dekniknik@yahoo.co.id

ABSTRACT

As a solution to address the interest of foreign citizens to own houses and land in Indonesia, the Government regulates this in Article 41 and Article 42 of Law No. 5/1960 (UUPA) as well as Government Regulation No. 18/2021 on Management Rights, Land Rights, Flat Units, and Land Registration. However, obtaining such rights requires time, significant costs, and the fulfillment of certain conditions. Often, foreigners are reluctant to engage in complicated and time-consuming processes, preferring the easy, cheap and fast way. In addition, there is a practice of land tenure by foreigners which in reality is considered a form of legal smuggling. Hence, this research aims to identify and analyze the granting of right of use on freehold land to foreign citizens in Badung Regency, as well as to identify and analyze the effectiveness of laws and regulations in granting right of use on freehold land to foreign citizens in Badung Regency. This research is juridical empirical, with primary data obtained through direct interviews with respondents and informants in the field, while secondary data is obtained through library research on primary, secondary, and tertiary legal materials. The research findings revealed that the implementation of the provisions on the granting of the right of use on freehold land for foreign citizens in Badung Regency has been effective, as the data suggest that foreign citizens in Badung Regency have obtained land rights in accordance with the provisions of the law.

Keywords: *Badung Regency, Foreigners, Right of Use*

INTRODUCTION

In the current era of globalization, the number of foreign citizens entering Indonesia is increasing due to various purposes. Many of them are looking for land, both for business and residence. This can be seen from the number of foreigners who acquire land in various locations in Indonesia, including in Bali Province. Badung Regency, as a center of tourism activity with many national and international tourist attractions and accommodations, is a popular destination for foreign tourists to reside.

The increase in the number of foreigners in Bali is a result of the rapid development of the tourism sector. The Bali Provincial Government prioritizes the tourism sector, along with agriculture and small industries, which impacts the demand of land for various facilities such as hotels, restaurants, travel agencies, craft industries, and transportation facilities. This demand requires supervision to avoid disturbing public order and welfare, hence foreigners residing in Indonesia must comply with applicable regulations.

Foreigners are those who live in a country regardless of being its citizens.¹ Under Article 7 of Law No. 12/2006 on Citizenship of the Republic of Indonesia, foreigners refer to those who are non-Indonesian citizens.² Article 26 Paragraph 1 of the 1945 Constitution states that citizens include indigenous Indonesians and foreigners authorized as citizens by law. Further arrangements regarding citizenship are regulated in Law No. 12/2006.

In Indonesia, every development effort and land use is expected to support the prosperity of the people, in accordance with Article 33 Paragraph 3 of the 1945 Constitution and Law No. 5/1960 on Basic Agrarian Principles (UUPA). The Basic Agrarian Law emphasizes the principle of nationality, which states that only Indonesian citizens (WNI) are entitled to full rights to land. Foreign citizens may only hold the right of use or the right of lease.

The granting of the right of use is expected to ease foreigners in acquiring land in Indonesia. Given that the mobility of foreigners is expected to continue increasing due to advances in science, telecommunications, and transportation, it is necessary to establish regulations that provide legal certainty. In addition to policy making, effective implementation is also crucial. The National Land Agency is expected to interpret policies into concrete actions, although policy implementation always carries the risk of failure. In national land law, there are various land tenure rights organized in a hierarchy as follows:

¹ Hatice Hilal Tiritoglu Ersoy, "Türkiye'de Mültecilerin Çalışma ve Sosyal Güvenlik Hakları," *Yıldırım Beyazıt Hukuk Dergisi*, no. 2 (July 31, 2019): 435–74, <https://doi.org/10.33432/ybuhukuk.559811>.

² Pemerintah Pusat Indonesia, "Undang-Undang (UU) Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia" (Jakarta, 2006), <https://peraturan.bpk.go.id/Details/40176/uu-no-12-tahun-2006>.

1. Rights of the Indonesian Nation: the highest right to land involving both civil and public aspects.
2. The Right to Control from the State: land tenure rights that only involve public aspects.
3. Customary Law Communities' *Ulayat* Rights: civil and public rights while they still live.
4. Individual Rights: include property rights, business use rights, building use rights, use rights, liens, rental rights, and tenancy rights.
5. *Waqf*: property rights that have been donated.
6. Security Rights Over Land: Mortgage.³

Badung Regency in Bali is currently showing significant capital flows from foreigners. Land tenure by foreigners in this area is a common sight, especially for the construction of hotels and villas. Cooperation between the community and foreigners is usually through a more practical and cheaper land lease system. However, the transfer of land rights to foreigners is not legally documented, leading to irregularities in land administration. If it is left uncontrolled, it may put the local residents at a disadvantage. Therefore, this research aims to analyze the granting of the right of use and the effectiveness of laws and regulations in the given context.

LITERATURE REVIEW

Concept of Land Rights

A person's legal authority over an object or person is the fundamental definition of a right, which consequently establishes a legal relationship. Land rights provide the authority to use a certain area of land in the course of fulfilling certain needs.⁴ Therefore, land rights can also be interpreted as legal authority over a piece of land, which causes a legal relationship. This definition is regulated in Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA), specifically in Article 4 Paragraph 2.

Land rights include aspects of legal certainty and justice relating to the use and utilization of land to achieve prosperity. Legal certainty and justice alone are not sufficient to realize prosperity without proper use and utilization of land. Conversely, the use and utilization of land without legal certainty and justice also cannot provide fair and certain prosperity.⁵ This is the ideal of independence that ought to be realized.

³ Rofi Wahanisa, Aprila Niravita, and R. Benny Riyanto, "Juridical Review of the Existence of Bengkulu Land in Indonesian National Land Law," *Advances in Social Science, Education and Humanities Research* 192 (2018): 167–71, [https://lib.unnes.ac.id/43583/1/Juridical Review of the Existence of Bengkulu.pdf](https://lib.unnes.ac.id/43583/1/Juridical%20Review%20of%20the%20Existence%20of%20Bengkulu.pdf).

⁴ Jeremie Gilbert, "Land Rights as Human Rights: The Case for a Specific Right to Land," *SSRN Electronic Journal*, 2013, <https://doi.org/10.2139/ssrn.2401190>.

⁵ Sugina Hidayanti, Indra Koswara, and Yopie Gunawan, "The Land Legal System in Indonesia and Land Rights According to the Basic Agrarian Law (UUPA)," *LEGAL BRIEF* 11, no. 1 SE-

Based on the provisions in the Basic Agrarian Law, any individual holding a land right has the authority to use the land while complying with the prevailing laws and regulations. Any person, regardless of citizenship status, may hold land rights in Indonesia. This principle is reflected in Article 4 Paragraph 1 of the Basic Agrarian Law, which states that rights over the surface of the earth or land may be granted to any individual or legal entity.⁶

Nevertheless, the types of land rights that can be owned by an individual are varied. The Basic Agrarian Law specifies the various types of land rights in Article 16 Paragraph 1, which includes the right of ownership, the right to cultivate, the right to build, the right of use, the right of lease, the right to open land, the right to collect forest products, and other rights to be determined by law.⁷ Foreigners are only entitled to own land in Indonesia through the right of use and the right of lease.

Right of Use

Under Law No. 5/1960 on Basic Agrarian Principles, the right of use is regulated in Articles 41 to 43. Article 41 Paragraph 1 of the Basic Agrarian Principles defines the right of use as “the right of use and/or collect products from land directly controlled by the state or land owned by others”. This right grants the powers and obligations specified in the decree granting it by the authorized official or in an agreement with the landowner, provided that it is not contrary to the law.

The elucidation of Articles 41 and 42 of the Basic Agrarian Law states that the right of use is a collection of rights known in land law under various names, granting authority in accordance with the provisions of these articles. The right of use can also be granted for embassy buildings of foreign countries as this right can be valid as long as the land is used for such purposes. Using the right of use to establish a building is called "using", while "harvesting" involves other activities such as farming, fishing, animal husbandry, and plantation.⁸ Article 42 of the Basic Agrarian Law mentions that the right of use can be granted to Indonesian citizens, foreign citizens residing in Indonesia, Indonesian legal entities, and foreign legal entities with representatives in Indonesia.

The regulation of the right of use is currently stipulated in Government Regulation No. 18/2021 on Management Rights, Land Rights, Residential Units, and Land Registration, in lieu of Government Regulation No. 40/1996. In this Government Regulation, the right of use is regulated from Article 49 to Article 63, covering the right of use with a period of time and the right of use during its utilization. The right of use on state land is granted through a decree of the Minister

National and International Criminal Law (November 30, 2021): 366–78, <https://legal.isha.or.id/index.php/legal/article/view/135>.

⁶ Pemerintah Pusat, “Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria” (Jakarta, 1960).

⁷ Pusat.

⁸ Suryani Sappe, Adonia Ivone Latturete, and Novyta Uktolseja, “Hak Pakai Atas Tanah Hak Milik Dan Penyelesaian Sengketa,” *Batulis Civil Law Review* 2, no. 1 (May 31, 2021): 78, <https://doi.org/10.47268/ballrev.v2i1.560>.

or a designated official, and the right of use on freehold land is granted by the land owner through a deed issued by a land deed official. The right of use is granted for a maximum period of 30 years, can be extended for 20 years, and renewed for 30 years. Right of use during use is granted for an indefinite period as long as the land is being used.

The right of use can be utilized in accordance with the decision and agreement granting it, used for business in accordance with statutory provisions, and can be encumbered with a mortgage. However, the right of use during its utilization cannot be used as debt collateral or transferred to other parties. The right of use can be revoked for a number of reasons, including the expiration of time, the Minister's cancelation, the land being deemed abandoned, the right being converted into another land right, voluntary relinquish, public interest, or revocation based on the legislation. The Government of Indonesia grants the right of use to foreign citizens who benefit, work, or invest within Indonesia, under the principle of prohibition of land alienation in accordance with the Indonesian land law system.

Freehold

Freehold is a fundamental right guaranteed by the Constitution. Article 28 Paragraph 4 of the 1945 Constitution stipulates that “everyone has the right to freehold, and that this entitlement may not be taken over arbitrarily by anyone.” Article 20 Paragraph 1 of the Basic Agrarian Law states that freehold is the hereditary, strongest, and fullest right that an individual may have over land. This right is considered the strongest and fullest, yet it is not absolute and can be contested due to its social function in accordance with Article 6 of the Basic Agrarian Law. Given its hereditary properties, this right can be inherited and transferred.⁹

Article 20 Paragraph 2 of the Basic Agrarian Law provides that property rights can be transferred and assigned to other parties. The "zakelijk" or material nature of a freehold title implies that it applies to everyone and is not personal and can therefore be transferred or assigned due to legal events such as inheritance or legal acts such as buying and selling. Freehold must be registered in order to be valid and enforceable against other parties. Registration is necessary to ensure legal certainty and protection for the owner of the freehold title.

Freehold title possesses several key characteristics as explained by Ali Achmad Chomzah, including: (1) hereditary, meaning it can be inherited; (2) strongest, meaning it is the most powerful of all land rights; and (3) absolute, meaning it can be used for a variety of purposes, including agriculture and

⁹ Ade Kurniawan, Yaswirman Yaswirman, and Syofiarti Syofiarti, “Transferring Rights in Freehold Estate through Inheritance Based on a Certificate of Heirs in Padang Utara District of Padang City,” *International Journal of Multicultural and Multireligious Understanding* 6, no. 3 (July 7, 2019): 585, <https://doi.org/10.18415/ijmmu.v6i3.878>.

development.¹⁰ The use of freehold must consider the social functions of land, such as not harming others, maintaining a balance between private and public interests, and maintaining the land to keep it fertile and undamaged. The subjects of property rights are Indonesian citizens and certain legal entities, while foreigners are prohibited from owning freehold land in Indonesia.

Freehold can be obtained through customary law or through law, and must be registered in accordance with statutory provisions. Any number of circumstances, including the public interest, the owner's voluntary surrender, abandonment, or ineligibility as a subject of rights due to mixed marriages without relinquishing rights within the allotted time, can result in the nullification of the freehold title in the event that the land is destroyed or falls into the possession of the state. Freehold title is also regulated in the provisions of Article 21 Paragraph 3 and Article 26 Paragraph 2 of the Basic Agrarian Law regarding the conditions of the subject of the title and the consequences of violating these provisions.

Foreign Citizen

Citizens are members of the population who constitute the elements of the state, formerly called servants or *kaulanegara*. The term citizen is then becoming more appropriate as it implies a participant or member of a state, reflecting the position of an independent person. Every citizen is entitled to equal rights before the law, with certainty of rights, privacy, and responsibility. According to Article 26 Paragraphs 1 and 2 of the 1945 Constitution, citizens are indigenous Indonesians and people of other nations recognized by law as citizens, while residents comprise Indonesian citizens and foreigners residing in Indonesia.

Foreigners in Indonesia are regulated in Article 7 of Law No. 12/2006 on Citizenship, which states that a foreigner refers to any person who is not an Indonesian citizen.¹¹ Those who have lost their Indonesian citizenship are also classified as foreigners. Foreigners are subject to different rights and obligations than Indonesian citizens, including certain restrictions that may include deportation or *persona non-grata*. Every foreigner must be registered in accordance with the laws and regulations. Nonetheless, they are entitled to civil rights such as buying and selling, marriage, and the right to acquire Indonesian citizenship through marriage. They are also entitled to receive wages for employment in Indonesia, and may engage in business activities that benefit them. Indonesian regulations do not eliminate the possibility for foreigners to operate businesses in Indonesia.

¹⁰ Eman Sulaiman, "Kepastian Hukum Dan Perlindungan Hukum Kepemilikan Hak Atas Tanah," *Ash-Shahabah : Jurnal Pendidikan Dan Studi Islam* 8, no. 1 SE-Articles (April 16, 2023): 1–14, <https://doi.org/10.59638/ash.v8i1.433>.

¹¹ Indonesia, "Undang-Undang (UU) Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia."

Legal System Theory

Lawrence M. Friedman presented the legal system theory which consists of three main elements: structure, substance, and culture.¹² Legal structure refers to the fundamental framework of the legal system, functioning as a permanent institutional body. Legal substance includes the substantive rules as well as the expected behavior of the institutions. Legal culture involves social attitudes and values that influence how the law is applied, including customs, opinions, and ways of thinking that direct social forces towards or away from the law.

Lawrence M. Friedman's Legal System Theory is a reference in the preparation of national legal development plans in Indonesia, as stated in the Law No. 17/2007 on the National Long-Term Development Plan (RPJPN) 2025-2045. National legal development is directed at creating a legal system that reflects the values of Pancasila and the 1945 Constitution, including legal substance, institutions, and legal culture. Legal development aims to ensure order and prosperity, as well as respect for human rights, through structuring legal materials and increasing public compliance with the law. This theory is also applied to analyze the granting of the right of use on freehold land to foreign citizens in the context of legal development in Indonesia.

Legal Certainty Theory

Legal certainty theory is being used in the context of granting the right of use on land for foreigners because this process involves land registration which includes land mapping and bookkeeping. The ultimate goal of land registration is to achieve legal certainty, as stipulated in Article 19 of the Basic Agrarian Law. Land registration involves measurement, mapping, land bookkeeping, registration of land rights and their transfers, as well as the provision of title deeds that serve as strong evidentiary tools. Land registration is organized by considering the state of the country and society, the needs of social and economic traffic, and the possibility of its implementation according to the consideration of the Minister of Agrarian Affairs. Land registration fees are regulated in a Government Regulation, with the provision that people unable to afford the fees are exempted from paying them.

This research applies Lawrence M. Friedman's legal certainty theory, which states that legal certainty can be achieved if it is supported by legal substance, legal apparatus, and legal culture. Legal substance refers to the content of the written provisions of the law itself, the legal apparatus is the work system and implementers of these provisions, and legal culture includes people's attitudes towards the law. Normative legal certainty refers to the fact that regulations are enacted and promulgated in a clear and logical manner, without norm ambiguity or conflicts between norms. This theory is used to discuss the constraints in the implementation of regulations on the granting of the right of use land to foreign citizens in Badung

¹² Lutfil Ansori, "Reformasi Penegakan Hukum Perspektif Hukum Progresif," *Jurnal Yuridis* 4, no. 2 (2017): 148–63.

Regency, especially related to the formal fulfillment of legal rules and their correct application in order to fulfill the substance of the law.

Legal Protection Theory

According to the Great Dictionary of Indonesian Language (KBBI), the term protection is the process or act of protecting. Black's Law Dictionary defines protection as the act of protecting. Law is the overall regulation of behavior in collective life that can be enforced with sanctions.¹³ Therefore, legal protection aims to provide protection to human rights that have been harmed by others, as well as legal efforts conducted by law enforcement officials to provide a sense of security to the community, both physically and emotionally, from disturbances and threats.

RESEARCH METHODOLOGY

This research uses empirical legal method, which focuses on the gap between legal theory (*das sollen*) and the reality in practice (*das sein*).¹⁴ Empirical legal research collects primary data from field research and secondary data from legal materials.¹⁵ Primary data is obtained from direct interviews with informants at the Badung Regency National Land Agency Office, while secondary data is provided from laws and regulations along with the relevant legal literatures. This research highlights the gap between Law No. 5/1960 on Basic Agrarian Regulations and actual implementation in reality, especially regarding the right of use for land by foreign citizens.

The approaches in this research include four types: socio-legal, statutory, legal concept analysis, and case approach. The socio-legal approach studies legal behavior in society, while the statutory approach examines regulations related to legal issues. The legal concept analysis approach examines the views of legal experts, and the case approach studies the implementation of legal norms in practical terms. Data collection techniques included document studies, interviews, and observations. The research was conducted at the Badung Regency Land Office, considering that the area is a leading tourist destination with high tourism activity. The data collected was analyzed qualitatively and presented in a qualitative descriptive method.

¹³ Sumaryono Sumaryono and Sri Kusriyah Kusriyah, "The Criminal Enforcement Of The Fraud Mode Of Multiple Money (Case Study Decision No.61 / Pid.B / 2019 / PN.Blora)," *Jurnal Daulat Hukum* 3, no. 1 (April 22, 2020): 237, <https://doi.org/10.30659/jdh.v3i1.8811>.

¹⁴ Ellyne Dwi Poespasari, Trisadini Prasastinah Usanti, and Soelistyowati, "The Settlement of Adopted Children Status Regarding The Inheritance of Adoption Parents in Toraja Community," *YURIS (Journal of Court and Justice)* 2, no. 1 (2023): 40–53, <https://doi.org/10.56943/jcj.v2i1.240>.

¹⁵ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris*, Cet.2 (Depok: Prenada Media Group, 2018).

RESULT AND DISCUSSION

Terms and Conditions for Obtaining the Right of Use on Land for Foreigners

In order to obtain the right of use for land in Indonesia, especially in Badung Regency, foreign citizens must fulfill the requirements in accordance with the prevailing regulations. I Nyoman Supriantara Widiadi, the Coordinator of the Substance Group of Land and Space Registration, Communal Land, and Institutional Relations of the Badung District Land Office, informed that foreigners may only be granted a right of use and may not be granted freehold title to land. This right of use is granted for a certain period of time, especially for residential houses with a maximum area of 20 acres. In Bali, the minimum price of houses that can be acquired by foreigners is IDR 5 billion for landed houses and IDR 2 billion for flats.

According to Article 42 letter b of the Basic Agrarian Law, foreign citizens who can obtain the right of use in Indonesia are those who have a domicile in Indonesia and fulfill the immigration requirements. The right of use is divided into right of use with a certain period of time and right of use during its use, the latter specifically for government agencies and foreign representatives. Right of use with a fixed term can be granted for up to 30 years and can be extended or renewed. An application for the right of use is conducted through a Ministerial decree or the deed of a Land Deed Official and must be registered at the Land Office.

Right of use holders must comply with various obligations, such as building according to designation, maintaining the land, and following spatial planning. A right of use can be used as collateral for debt, transferred, or converted. The right of use is terminated due to expiration of the term, breach of obligations, or change of rights.

Foreign citizens with a residence permit in Indonesia may also own a flat unit with certain price and area restrictions. The requirements for a right of use application include the applicant's identity, immigration documents, title deed, land parcel map, and proof of taxation. The process for first-time right of use takes 38 days for land up to 2,000 m², 57 days for land between 2,000-150,000 m², and 97 days for land over 150,000 m², with fees following the rates set out in Government Regulation No. 128/2015 on Non-Tax Revenue (PNBP) at the Ministry of Agrarian Affairs and Spatial Planning/State Land Agency (BPN).

The mechanism for granting the right of use for foreigners is regulated by the Minister of Agrarian and Spatial Planning/Head of State Land Agency Regulation No. 18/2021. The process begins with the submission of an application to the Minister through the Head of the Local Land Office. The process of transferring rights involves either the Indonesian citizen handing over their right of use and requesting that the foreign party apply for it, or the Indonesian citizen dropping their right of use to a right of use prior to it being sold to a foreigner.

The Head of the Land Office examines, scrutinizes and decides on the application, and if the right of use lasts longer than the freehold, it is registered immediately. The Head of the Regional Office examines and prepares a decision if the authority lies with the Head of the Regional Office, while the Minister examines and decides if the authority lies with the Minister. In Badung Regency, the process involves registration of the applicant at the Land Office, measurement of the land, inspection of the land, relinquishment of rights if required, as well as payment of Fees for Acquisition of Rights on Land and Building (BPHTB) and issuance of a right of use certificate upon approval.

The authority to determine agricultural and non-agricultural land is regulated on the basis of different land areas, with the Head of the Land Office or the Head of the Regional Office in charge. Effectiveness factors in this process involve the performance of Land Office employees and Land Deed Officials (PPAT), facilities, and community compliance with regulations. The theories applied include legal certainty and the legal system, which includes the structure, substance and culture of law. This process ensures compliance with regulations and clear mechanisms in granting right of use to foreigners.

The Role of Notaries/Land Deed Officials in the Process of Granting the Right of Use

Notaries and Land Deed Officials function as public officials who are authorized to draft authentic deeds relating to legal acts. They provide valid written evidence of relevant legal acts or circumstances. Notaries are in charge of drafting authentic deeds based on the will of the parties present before them, while Land Deed Officials hold special authority in drafting deeds related to land rights.

Notaries are authorized to draft authentic deeds, maintain the confidentiality of information, and store deeds. They play an important role in the process of granting land rights, including in the process of relinquishing rights. Land Deed Officials are responsible for drafting authentic deeds required for land registration, such as deeds of sale and purchase, exchange, grant, and mortgage, as well as managing any changes to land registration data.

Relinquishment of rights is the process by which an Indonesian citizen relinquishes his or her freehold to the state so that the land can be occupied by a foreigner. A notary draws up the deed of relinquishment of rights in this process. In the meanwhile, a foreigner may be granted the right of use once the land becomes state property or unrestricted by other rights. Land Deed Officials then draft a deed granting the right of use or a deed of sale when the land is effectively a right of use.

For the release of rights, Indonesian citizens are required to fulfill requirements such as a certificate of ownership, tax notice (SPPT)/land and building tax (PBB), and identity documents. Notaries or Land Deed Officials verify the certificate, ensure payment of relevant taxes, and draft the deed of release of rights. Meanwhile, for the application of the right of use, foreigners are required to provide

documents such as passport and residence permit. Once the title release deed is issued, the foreigner can apply for the right of use.

Land Deed Officials are responsible for the deed, including reviewing the certificate data against the register at the Land Office, and may face legal liability in the event of any irregularities. Notaries and Land Deed Officials must comply with the principles of good governance, including legal certainty, accuracy and proportionality.

This process involves structure such as the National Land Agency, Notaries and Land Deed Officials, substance in the form of legal rules governing procedures, and culture which includes community practices and customs. Land registration and transfer of rights must comply with applicable legal provisions to ensure legal certainty and orderly administration. In conclusion, Notaries and Land Deed Officials play an important role in the legal process related to land rights, especially in managing the transfer of rights from Indonesian citizens to foreigners and ensuring that the deeds issued are in accordance with applicable regulations.

Due Diligence of Notary in Deed Making Related to Application for Right of Use by Foreigners

According to Law No. 2/2014, notaries function as public officials who draft authentic deeds to ensure certainty, order, and legal protection in transactions or legal actions. This authentic deed serves as valid written evidence and reflects formal truth based on information from the relevant parties. The notary is obliged to read and explain the contents of the deed to the relevant parties to ensure that they fully comprehend and consent to its contents. The notary's obligations include the precautionary principle, which is to thoroughly examine documents and information, including verification of identity and documents from the parties to ensure the validity and authenticity of the documents. Notaries must also adhere to the Code of Ethics, act with integrity, honesty and professionalism, regardless of financial gain. In addition, notaries must act with trustworthiness, honesty, care, independence, and safeguard the interests of all parties. If notaries fail to perform their duties with due care, they can be held accountable in the administrative, civil, and criminal courts.

In the practice of due diligence, the notary must recognize and verify the identity and documents of the notary, ensure that the documents are authentic and valid and in accordance with the actual circumstances, and ensure that the legal action is in accordance with applicable regulations and is not in dispute. If the notary has performed due diligence properly yet there is an error on the part of the notary, the notary cannot be held liable. However, if the notary neglects due diligence and forgery or violation occurs, the notary can be held liable in administrative, civil, and criminal terms. Notaries must carry out their duties in accordance with the regulations to avoid potential lawsuits in the future.

Legal certainty in the land sector is necessary to increase sustainable national development, and it can be achieved through government land registration. The Head of Office cooperates with Land Deed Officials and other relevant officials to register land. Based on Government Regulation No. 37/1998, Land Deed Officials are in charge of drafting deeds for the registration of changes in land data due to legal actions such as sale, purchase, exchange and grant.¹⁶

The procedures to be completed by Land Deed Officials include ensuring the validity of the agreement in accordance with Article 1320 of the Civil Code and conducting checks to determine the eligibility of the parties and the appropriate type of deed. Land Deed Officials also draft the deed, read and explain the contents of the deed to the parties and witnesses, and sign the deed with them.

Under the precautionary principle, Land Deed Officials must recite and explain the contents of the deed in the presence of at least two witnesses to ensure the parties' comprehension. Land Deed Officials must comply with the Regulation of the Head of the National Land Agency on the use of appropriate deed blanks and verify the validity of land certificates. In addition, Land Deed Officials must check the suitability of the certificate and related documents at the Land Office before drafting the deed, and must not make a deed for land that has not been measured or has yet to be assigned a Field Identification Number (NIB).

The purpose of this practice is to provide legal certainty to the parties involved in the transaction and protect Land Deed Officials from potential future lawsuits due to negligence in the process of drafting deeds. Legal system theory is used to illustrate the role of Land Deed Officials as an important structure in the legal system, who must conduct their duties with due diligence to ensure that the deeds drafted are valid and in accordance with applicable regulations.

Satisfaction of Service for the Right of Use by Foreigners

This research highlights the implementation of the law related to Article 40 and Article 41 of Law No. 5/1960 (Basic Agrarian Law) on the right of use on land, as well as the implementation of Government Regulation No. 18/2021. The primary focus of this research is the enforcement of the right of use law, which involves various systems and subsystems to achieve the objectives of the law. Research results in Badung Regency indicate that foreigners do not entirely comprehend land rights in Indonesia, including the types of rights they may hold. They want government counseling on land rights to avoid mistakes in the transfer of rights. At the Land Office, they encountered difficulties in obtaining the right of use, complaining that the service was cumbersome, slow, and lacking in legal counseling. The Land Office only conducts recording and registration, without providing legal counseling.

¹⁶ Pemerintah Pusat Indonesia, "Peraturan Pemerintah (PP) Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah" (Jakarta, 1998), <https://peraturan.bpk.go.id/Details/55057/pp-no-37-tahun-1998>.

Meanwhile, at the notary office, respondents received legal counseling in accordance with Article 15 Paragraph 2 of the Notary Position Act Amendment prior to the transfer of rights. Although there were several time-related obstacles, the quality of service at the notary office was considered satisfactory. Data on right of use certificate issuance for foreigners in Badung Regency indicates fluctuations, with 12 certificates in 2021, decreasing to 6 in 2022, and increasing again to 11 in 2023. Several villages did not issue right of use certificates during this period.

According to Notaries/Land Deed Officials in Badung, the right of use is less desirable due to high costs, complicated requirements, and long processing times. A large number of foreigners prefer leasehold or rental rights which they consider to be more practical. Overall, despite the effectiveness of the regulations, lack of understanding, complicated processes, and high costs have led to low interest among foreigners in applying for the right of use. Increased outreach and simplification of procedures may help address these issues.

Obligation of the National Land Agency to Issue Right of Use Certificates to Foreigners

The National Land Agency is a non-ministerial government agency under the President, responsible for managing land administration in Indonesia in accordance with Law No. 5/1960 and other regulations. The primary tasks of the National Land Agency include the regulation, use, control, and ownership of land, as well as the determination of land rights, measurement, and land registration. According to Presidential Regulation No. 48/2020, the National Land Agency performs 12 primary functions:

1. Land policy;
2. Survey, measurement, and mapping;
3. Land rights determination and land registration;
4. Land redistribution, land structuring, and zoning;
5. Land acquisition and land development;
6. Control and regulation of land tenure and ownership;
7. Handling land disputes and conflicts;
8. Supervision of the implementation of tasks within the National Land Agency;
9. Coordination, guidance, and administrative support;
10. Management of land data and information;
11. Land research and development;
12. Human resource development in the land sector.¹⁷

¹⁷ Pemerintah Pusat Indonesia, "Peraturan Presiden (Perpres) Nomor 48 Tahun 2020 Tentang Badan Pertanahan Nasional" (Jakarta, 2020), <https://peraturan.bpk.go.id/Details/135448/perpres-no-48-tahun-2020>.

The Land Office, a working unit of the National Land Agency in the regency or municipality, carries out land registration and maintenance of the land registration list. The functions of the Land Office include plan preparation, services, licensing, surveying, mapping, land stewardship, land control, and dispute handling. In land registration, the Head of the Land Office is assisted by Land Deed Officials and other officials. A land title certificate is a vital document that serves as proof of ownership and can be used as collateral or security. Only the party whose name is listed in the land book or the party authorized by it are eligible for the certificate.

Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency No. 18/2021 regulates the issuance of the right of use certificate for foreigners, ranging from examining the application file to issuing the decision. The right of use certificate comes into effect after being registered by the Land Office. Legal system theory is used to describe the mechanism for granting the right of use on land involves a legal structure, with the National Land Agency as the land administration management institution.

CONCLUSION AND SUGGESTION

Conclusion

The granting of the right of use on freehold land for foreign citizens in Badung Regency is conducted in two ways: first, through the process of changing or downgrading the right, and second, through the release of the right along with the application for the right. In the process of changing or downgrading rights, the Indonesian citizen who owns the land must apply for the downgrading of rights to the Head of the local Land Office, and upon issuance of the right of use certificate in the name of the Indonesian citizen, a deed of sale and purchase from the Indonesian citizen to the foreigner will be drafted. Meanwhile, during the process of relinquishing rights followed by a rights application, the deed of relinquishment is prepared by both the Indonesian citizen and the foreign citizen, after which the foreign citizen submits an application for land rights to the State through the Head of the Land Office. Notaries or Land Deed Officials play a role in notarizing the deed to release land rights which is then used to apply for rights for foreigners at the Land Office, as well as in drafting other deeds related to the transfer and application for the right of use on land. The implementation of right of use in Badung Regency is considered effective since foreign citizens have successfully obtained right of use in accordance with the regulations, and they are satisfied with the services from the Notary/Land Deed Officials office although they still expect further socialization from the government regarding land rights that they can own in Indonesia.

Suggestion

Improvement and simplification of requirements and service mechanisms in the land sector are necessary to facilitate Indonesian citizens and foreigners in managing rights of use over land. A special legal counseling program on land rights is required to ensure that the public, especially foreigners, obtain accurate information and encounter less difficulties in transferring land rights in Indonesia. Notaries or Land Deed Officials are expected to conduct their duties in compliance with the professional code of ethics and the precautionary principle to avoid potential losses and legal problems in the future. In addition, continuous legal socialization to the public, especially foreigners, should be conducted to ensure that they comprehend and adhere to the regulations in the right of use process. An in-depth comprehension of land rights transfer also requires to be provided to local communities in order to ensure that their interests are not overlooked when transferring their rights to foreigners.

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