



The legal status of land tenure of foreign nationals obtained through public auction on the object of mortgage rights

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ABSTRACT

The aim of this research is to determine and analyze the validity of auction minutes documents as evidence of the transfer of land rights to foreigners and to analyze the legal status of land rights owned by foreign nationals who acquire goods through a mortgage auction. This research uses normative juridical research methods, specifically a normative legal research approach. This approach includes statutory analysis and conceptual analysis. Based on the research results: 1. The position of the auction minutes as evidence of the transfer of ownership rights to land to foreign nationals shows that the minutes prepared by the auctioneer can be a valid basis for documenting the transfer of land rights. foreign nationals. 2. Regarding the legal status of land ownership obtained by foreign nationals through mortgage auctions, it is determined that the land ownership is valid according to the law.



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INTRODUCTION

The UUHT governs the granting or encumbrance of land rights, involving both subjects and objects. The subject, in this context, refers to the rights giver and holder of the HT, whether an individual or a legal entity with the legal authority to execute such actions. On the other hand, the object of mortgage rights encompasses land rights that can be utilized as collateral for loans or credit guarantees, including Land Ownership Rights (HM), Building Use Rights (HGB), and Use Rights (HP) on the land (Sembiring, 2013).

Article 8, paragraph (1) of the UUHT specifies that the grantor of HT must be an individual or legal entity authorized to undertake legal actions concerning the relevant HT object. Additionally, Article 9 of the UUHT defines the holder of the Mortgage as an individual or legal entity acting as a debtor.

Article 9 of the UUHT presents an opportunity for foreign nationals to serve as holders of mortgage rights. This is possible because there are no specific prerequisites for mortgage rights holders. Thus, the entity or individual mentioned in Article 9 can be a domestic or foreign legal entity, as long as the credit in question is intended for business activities within the territory of the Republic of Indonesia, as stipulated in Article 10 of the UUHT. This means that foreigners can assume the role of subjects (holders of mortgage rights).

Regarding the management and ownership of mortgaged assets, Article 12 of the Mortgage Rights Law is designed to safeguard the interests of the debtor and other mortgagors, particularly if the value of the mortgaged object exceeds the amount due. The holder of the Mortgage Rights is prohibited from immediately becoming the owner of the mortgaged object due to the debtor's default (Izza, 2022). However, it is permissible for the holder of the Mortgage Rights to acquire the mortgaged object by following the procedures outlined in Article 20.

Article 20, paragraph (1) (b) specifies that in the event of debtor default, the Mortgagee can auction the mortgaged assets to settle their claims, with priority given to other Mortgagee Recipients. The Deed of Grant of Mortgage (APHT) includes terms and conditions, one of which grants the second party, as the first-rank holder of the mortgage right, the power to sell or order the public auction sale of the mortgaged object, in whole or in part, without prior approval from the first party, if the debtor fails to fulfill their repayment obligations based on the debt and credit agreement.

This provision within the deed empowers the creditor or holder of the mortgage rights, including foreign individuals, to sell the collateralized object of mortgage rights under their control through the auction process. Consequently, there are no specific requirements for the purchaser of the mortgaged object in the explanations of Article 12 of the Mortgage Rights Law and Article 1, point 22, of Minister of Finance Regulation Number 27/PMK.06/2016 concerning Guidelines for the Implementation of Auctions. This flexibility allows foreign nationals to participate as buyers of mortgaged objects if the recipient of the mortgage rights defaults. If declared the auction winner, their name will be recorded in the auction minutes, as stipulated in Article 41, paragraph 1, of Government Regulation Number 24 of 1997 concerning Land Registration. It states that "the transfer of rights through an auction can only be registered if it is evidenced by an extract of the minutes of the auction made by the auction official."

Excerpts from auction records serve as evidence of land rights transfer, including sales and purchase deeds in legal transactions related to land transactions. Land rights acquisition and supporting evidence are not widely understood by the general population. When land is categorized as "Hak Milik" (ownership rights), it indicates that the land can be managed and used indefinitely (Rosandi, 2016). The transfer of land ownership can be executed through a public auction. Regarding the legal implications of such auctions, if a foreign national wins the auction, they will receive "property rights" over the auctioned property, which then becomes the subject of the mortgage. However, it should be noted that Indonesia adheres to the principle of Nationality in its legal system when it comes to land ownership.

The principle of nationality implies that only Indonesians are allowed to have property rights over land in Indonesia, as stipulated in Article 21 and Article 26 paragraph (2) of the UUPA. When a foreign national is ineligible for land ownership, they are granted land tenure status through an auction with rights of use or other forms of rights. This situation can potentially create issues related to legal uncertainty and inconsistency in the regulations governing property rights over land acquired by foreign nationals through mortgage auctions.

The study conducted by Sudiarto et al. (2021) on the topic of "Auction Minutes Deed as Evidence of Transfer of Ownership Rights to Land for Foreign Citizens" concluded that the auction minutes deed, created by the auction officer, can serve as valid evidence for the transfer of ownership rights. The National Land Agency is responsible for managing land rights for foreign citizens. Syarifuddin (2021) conducted a study titled "Legal Position and Validity of Land Rights Ownership by Foreign Citizens through Inheritance". The findings of his research indicate that individuals who have altered their citizenship status to acquire foreign citizenship can still inherit, as evidenced by their lineage. If the land has been converted into state land, the owner is considered to have forfeited their rights, although they are still legally entitled to apply for the right to utilize the land.

The primary concern of the author revolves around two key questions: What is the legal validity of the auction minutes for land ownership rights held by foreign nationals? And how should the legal position of foreign nationals who are declared winners in mortgage rights auctions be justified?

RESEARCH METHODS

This study employs Normative Legal research, which is conducted by relying on existing laws and regulations and supplements it with field data. It utilizes a Legislative approach and a conceptual approach for legal material collection, employing document study techniques and employing comprehensive interpretation analysis to analyze the legal materials. Normative legal research is often commonly referred to as library research. This is because doctrinal legal study tends to rely on textual sources (Sonata in Tinambunan & Prasetyo, 2019).

RESULTS AND DISCUSSION

1. Binding Force of Deed of Minutes of Auction of Land Rights Ownership of Foreign Nationals

The inception of the State Auction Unit dates back to 1908 when the Auction Reglement Stb. 1908 - 189 and the Auction Instruction (Vendu Instructie) Stb. 1908 - 190 were officially promulgated. From its inception, the Auction Unit was established as the authority responsible for overseeing auction affairs within the Ministry of Finance (Sutardjo in Fitra, 2020).

Article 1 point 1 of the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Guidelines for the Implementation of Auctions defines "Auction" as the public sale of goods through written and/or oral price offers, with bids increasing or decreasing until the highest bid is reached, preceded by an Auction Announcement.

Several key components directly linked to the execution of auction sales include:

- a. Auction Officer, as defined in Article 1 point 14 of the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Guidelines for the Implementation of Auctions, is an individual authorized by statutory regulations to conduct the sale of goods through auctions.
- b. Applicant/Auction Seller is an individual, legal entity, agency, or business with the legal right to auction goods based on applicable laws, regulations, or agreements. They submit an application to the auction office to auction their owned or controlled goods.
- c. Bidders are individuals, legal entities, or business entities eligible to participate in auctions, except those explicitly prohibited by Article 77 of the Regulation of the Minister of Finance of the Republic of Indonesia No. 27/PMK.06/2016. Prohibited parties include judges, prosecutors, registrars, lawyers, auction officers, bailiffs, notaries, and other individuals directly involved in the auction process.
- d. Auction Buyer is the individual or entity that submits the highest bid, exceeding the predetermined value limit, and is declared the auction winner by the Auction Officer.

The term "auction participant" encompasses participants, bidders, the highest bidders, buyers, or purchasers, depending on their role in the auction process. An auction participant can be an individual or a legal entity/business entity submitting the highest bid and being declared the auction winner by the Auction Officer (Rachmadi, 2016).

Any person, legal entity, or business entity is eligible to participate as an auction participant, except for those legally prohibited by Article 77 of the Minister of Finance Regulation Number 27/PMK.06/2016 concerning Guidelines for the Implementation of Auctions. These prohibited parties include:

- a. Parties explicitly barred from becoming auction participants, such as Auction Officials and their immediate blood relatives in the first degree, spouses, and siblings, as well as Selling Officials, Auctioneers, Judges, Prosecutors, Registrars, Bailiffs, Lawyers or Advocates, Notaries, Land Deed Officials, Appraisers, DJKN employees, Auction Centre employees, and Class II Auction Officer employees directly involved in the auction process.
- b. In addition to the parties mentioned in paragraph (1), parties involved in the Execution Auction, including executed parties, debtors, defendants, or actors related to the auction, are also prohibited from becoming bidders.

Based on Article 77 of Minister of Finance Regulation Number 27/PMK.06/2016, which outlines the guidelines for conducting auctions and identifies ineligible participants, it can be concluded that this article does not prohibit foreign nationals from participating in auctions. Therefore, foreigners are permitted to take part in auctions, provided that they possess a Taxpayer Identification Number (NPWP) specifically designated for immovable properties or land, in accordance with the procedures outlined in Article 6 of the Directorate General of Taxes Regulation Number PER-38/PJ/2013.

Auctions involving mortgage rights, as governed by mortgage agreements prepared by PPAT, are carried out based on the creation of Deeds of Granting Mortgage Rights (APHT). These deeds typically contain a facultative clause stating that in case the debtor fails to fulfill their repayment obligations, the mortgage holder, as indicated in the first-priority mortgage right, is authorized to sell or arrange for the public auction of the mortgaged property, either in part or in full, without prior approval from the debtor.

As a result, if the debtor defaults, foreign creditors holding the mortgage rights have the implicit authority to initiate the auction process themselves by involving the auction office. The preparation of APHT in the name of foreign nationals, who serve as mortgage holders, is a legitimate action carried out by PPAT. In accordance with Article 9 of the Mortgage Rights Law, there are no legal prohibitions against foreigners acting as mortgage holders. Thus, PPAT is legally empowered to create Deeds of Granting Mortgage Rights on behalf of foreign individuals or entities holding mortgage rights.

The existence of the Deed of Minutes of Auction is crucial in the auction process, benefiting both the auction seller and the buyer. It serves as essential evidence of legal ownership of the auctioned property, whether it is movable or immovable. The evidentiary power of the Deed of Minutes of Auction encompasses physical, formal, and material evidentiary aspects, as outlined in Article 1868 of the Civil Code. When a bidder is declared the winning auction participant or buyer, they will receive a copy of the Deed of Minutes of Auction, as specified in Article 94 of Minister of Finance Regulation Number 27/PMK.06/2016, which provides guidance on the implementation of auctions.

In this scenario, it is also predicated on the premise that if a foreign national participates in an auction and fulfills the aforementioned auction participant requirements, they are deemed the buyer and victor of the auctioned item. The foreigner's name must be recorded in the auction minutes, as these records by the auction official must accurately reflect the factual circumstances. Subsequently, the foreign citizen, as the auction's buyer or winner, is obligated to address the legal status of the acquired land by registering the auctioned property with the local National Land Agency. This registration aligns with the principle of transparency as stipulated by applicable laws and regulations.

With the auction minutes drafted by the Auction Hall Official, the transfer of property rights over apartment units occurs, transitioning from the original seller, acting as the auction seller, to another party who becomes the auction buyer. However, this transfer of rights is known only to the two involved parties, and external parties remain unaware of the auction. To ensure public awareness, the auction should be registered at the local District/City Land Office, as land registration is a public process. Registration at the District/City Land Office adheres to the principle of transparency in land registration, enabling anyone to access physical data such as location, size, property boundaries, as well as juridical data concerning the rights holder, rights status, and the transfer of property rights over the apartment unit to the District/City Land Office (Urip Santoso, 2019).

The presence of a Deed of Granting Mortgage Rights (APHT) allows foreign citizens to hold mortgage rights and execute these rights if the debtor defaults. The sale of the mortgaged property can be conducted through an auction process, as stated in the provisions of the APHT. Additionally, Article 12 of the UUHT (Law on Mortgage Rights) underscores that this provision is in place to safeguard the interests of the debtor and other grantors of Mortgage Rights. Especially in cases where the value of the mortgaged property exceeds the debt amount pledged, the holder of Mortgage Rights is prohibited from immediately assuming ownership of the mortgaged object due to the debtor's default. Nevertheless, the holder of mortgage rights is not barred from purchasing the mortgaged object, provided they follow the procedures outlined in Article 20.

Taking into account the explanation in Article 12 of the UUHT, it becomes apparent that the UUHT offers opportunities for foreigners to manage property rights in Indonesia. Foreigners can actively participate in auctions, be recognized as buyers, and subsequently register land rights with the National Land Agency using the auction minutes as a basis for transferring property rights (Kartini & Gunawan in Hanapi, 2017).

2. The Position of Foreign Nationals Who Can Be Justified as Winners of Mortgage Object Auctions

The process of transferring land rights involves the transition of these rights from one individual to another. This transfer is a deliberate legal action with the goal of shifting land rights from the party transferring them to the receiving party. Government Regulation No. 24/1997 on Land Registration, in Article 37(1) and Article 41(1), specifies that the transfer of land rights and ownership rights of apartment units through sale and purchase, exchange, grants, company data entry, and other legally recognized forms of transfer can only be officially recorded if substantiated by a deed created by an authorized PPAT (Land Conveyancing Officer) in accordance with the relevant laws and regulations.

Article 41(1) of Government Regulation No. 24/1997 adds that the transfer of rights through auction can only be registered when supported by an extract from the auction minutes prepared by the

auction official. In the case of land rights transfers through auctions, the process must adhere to established auction procedures for both foreign nationals and Indonesian citizens, following the guidelines outlined in the Minister of Finance Regulation Number 27/PMK.06/2016 regarding Auction Implementation (Sumardjono in Sutedi, 2020).

The concepts of "ownership" and "control" can manifest in physical and legal forms, with implications for both civil and social aspects. Article 33(3) of the 1945 Constitution emphasizes that Indonesia is a nation that asserts state authority over land, water, and natural resources within its territory, utilizing them for the benefit of its people. In alignment with Article 33(3) of the 1945 Constitution, the National Land Law must prioritize the interests of the people (Boedi Harsono in Arba, 2021).

The Nationality Principle, as outlined in Article 21(1) and (2) of the Basic Agrarian Law, specifies that property rights can only be held by Indonesian citizens. The government determines the legal entities that can possess "hak milik" (full ownership rights) and the associated conditions. Consequently, non-Indonesian citizens cannot own land in Indonesia, and "hak milik" cannot be granted to foreign individuals. This provision is intended to safeguard the interests of the Indonesian nation.

Juridical land tenure is grounded in legally protected rights that grant the holder the authority to exercise control over a specific piece of land. However, in practice, this physical control may be delegated to other parties. For instance, if a landowner leases their land to another party, the physical control shifts to the lessee, who holds the lease right.

In land law, juridical control does not necessarily equate to physical control over the land in question. In cases involving land used as collateral for a mortgage, the creditor possesses juridical control over the land, but the physical control remains with the landowner. The right to control the land, when associated with a specific individual or legal entity, refers to the authority to manage the land according to the rights or powers granted to that rightful person (Boedi Harsono in Adrian Sutedi, 2023).

In the context of national land law, legal relationships concerning land-related activities of both Indonesian citizens and foreigners are governed by Law Number 5 of 1960 concerning Agrarian Principles (UUPA). One of the key principles enshrined in the UUPA is the principle of nationality.

Regarding land acquisition, many individuals are not well-informed about the procedures and required documentation. If a particular piece of land holds hak milik (ownership rights) status, it is relatively clear that the land can be owned and utilized indefinitely.

Article 27 of the Basic Agrarian Law outlines factors leading to the forfeiture of land ownership rights, with the land reverting to state ownership in cases involving:

- a. Revocation of rights under Article 18;
- b. Voluntary relinquishment by the owner;
- c. Abandonment;
- d. The provisions stated in Articles 21 paragraph 3 and 26 paragraph 2.

Hence, according to these provisions, particularly Articles 21 paragraph 3 and 26 paragraph 2 of the UUPA, which specify the qualifications for land ownership rights, it is stipulated that land ownership rights cannot be transferred to any other party. In essence, this means that individuals or legal entities holding land ownership rights cannot simply transfer these rights to others. Land ownership rights can only be transferred to Indonesian citizens (WNI) or Indonesian legal entities, as defined in Government Regulation No. 38/1963, which designates the eligible legal entities for land ownership rights. Failure to meet these conditions renders any transfer of property rights to land under the control of individuals who are not eligible, directly or indirectly to foreigners, individuals with dual nationality, or non-government-designated legal entities, null and void. Essentially, this implies that no agreement was ever established, no obligations exist, and the land reverts to state control.

Provisions regarding the qualifications of rights holders, especially for foreigners, are accompanied by penalties for violations, as specified in Article 26 paragraph (2) of the UUPA. Violation of this provision results in the nullification of land ownership rights transfer to foreigners, leading to the land reverting to state ownership.

This approach is grounded in the understanding that Hak Milik (ownership rights) represents the most comprehensive and robust form of land rights, authorizing the holder to grant other rights over the land, such as Building Rights or Use Rights, with the exception of Business Rights. This closely mirrors the authority of the State as the entity responsible for allocating land to its citizens.

In accordance with the Basic Agrarian Law, land ownership by foreigners, particularly property rights, is considered invalid. In cases where it can be proven that individuals deliberately engage in legal actions resulting in legal irregularities, their ownership can be revoked. The transfer of land ownership rights from Indonesian citizens to foreigners contradicts the core principles of the rule of law, which, in legal theory according to Utrecht, is referred to as the conception of the welfare state. The welfare state concept aims to safeguard the Indonesian nation from foreign influence across all sectors, including land ownership.

The process of conducting auctions for Indonesian citizens is executed in accordance with Minister of Finance Regulation Number 27/PMK.06/2016, which outlines the guidelines for conducting such auctions. Once these procedures are followed in compliance with the prevailing laws and regulations, Indonesian citizens can acquire various land rights, as specified in Article 16 paragraph (1) of Law Number 5 of 1960 concerning Agrarian Principles.

Indonesian citizens participating in the auction process and declared as winners receive a Minutes of the Auction deed. This document serves as the basis for registering land rights, ensuring transparency in property ownership. Land rights, as prescribed by the UUPA, can only be granted to Indonesian citizens, particularly when it comes to property rights, as they are the recognized legal entities entitled to land ownership in Indonesia.

Indonesian citizens seeking to change their land rights from Hak Milik to Hak Guna Bangunan or Hak Pakai must follow the procedures outlined in the Minister of Agrarian Affairs/Head of the National Land Agency Decree No. 16 of 1997. This process involves submitting an application along with various required documents.

Foreigners acquiring land through auctions can obtain a Minutes of the Auction deed. However, if the auctioned property has property rights status, foreign nationals are unable to transfer property rights based on this deed. This restriction is due to Indonesian National Land Law, which upholds the principle of citizenship and denies foreign nationals the ability to hold property rights to land. Nevertheless, the Minutes of the Auction deed obtained by foreign nationals can still be used as a basis for obtaining land rights other than property rights.

In principle, land rights are available to everyone regardless of their nationality. Therefore, foreign citizens can hold land rights in Indonesia. This principle is reflected in Article 4 paragraph (1) of the UUPA. The difference lies in the type of land rights that can be possessed by individuals. Land rights, which encompass legal certainty and justice, are closely linked to land utilization and development, leading to prosperity. Certainty and justice alone cannot achieve prosperity without utilization and use.

Conversely, utilization and use alone, without certainty and justice, cannot ensure fair and certain welfare, which is the ideal of independence (Soedjarwo Soeromihardjo in Hidayat, 2018).

Foreign citizens, as creditors or holders of mortgage rights on land with property rights owned by Indonesian citizens, have the authority to sell the mortgaged property through auction in cases of default or violation of the mortgage agreement by Indonesian citizens. This action aligns with the facultative clause in the Mortgage Grant Deed, which stipulates that if the debtor fails to fulfill their debt obligation, the holder of the first-ranking mortgage right, in this case, the foreign citizen, can sell or order the public auction of the mortgaged property, either in whole or in part, without prior approval from the debtor.

Foreign nationals have the option to initiate an auction process for mortgage rights on a property, as documented in the Mortgage Rights Grant Deed. In this scenario, foreign nationals, acting as the holders of mortgage rights, are required to submit their auction application to the KPKLN office. Foreign nationals are also eligible to register as auction participants and, if successful, can become buyers. This eligibility is in accordance with Article 12 of UUHT.

Should a foreign citizen win the auction, they will receive a Deed of Auction Minutes, serving as the basis for transferring ownership rights to the land as stipulated in Government Regulation Number 24 of 1997 on Land Registration.

It is essential to note that national land laws, particularly UUPA No. 5 of 1960, explicitly specify that only Indonesian citizens have the right to own land with full property rights within Indonesia. Foreign citizens are expressly prohibited from owning land rights.

In this context, land rights categorized as "Hak Milik" (full property rights) can only be held by Indonesian citizens, while foreign citizens are not permitted to own land in Indonesia. However, foreign

citizens can convert their rights to land use after winning an auction and obtaining the auction deed. This conversion is the basis for altering ownership rights to usage rights at the National Land Agency Office.

The procedure for changing the status of "Hak Milik" to "Hak Pakai" (right to use) for foreigners adheres to the provisions outlined in the Minister of Agrarian Affairs/Head of the National Land Agency's Decree Number 16 of 1997 regarding Changes in Rights, specifically transforming "Hak Guna Bangunan" (right to build) or "Hak Pakai" into "Hak Pakai."

To effect the change from "Hak Milik" to "Hak Pakai" for foreign individuals based on auction minutes, the "Hak Pakai" must be registered at the District/City Land Office. This step ensures transparency for the benefit of the foreign right holder.

It is important to note that the procedure for altering ownership rights into usage rights for foreigners based on auction minutes is based on the absence of specific regulations governing this process. Instead, it refers to the aforementioned Decree of the Minister of Agrarian Affairs/Head of the National Land Agency No. 16/1997, which primarily addresses the transformation of ownership rights into usage rights for land objects controlled by foreigners.

The UUPA does not provide detailed regulations concerning the ownership and control of land and buildings by foreign nationals or foreign legal entities in Indonesia. However, foreign nationals can own houses with "Hak Pakai" status. This is based on the concept of horizontal separation, where buildings and structures are considered distinct from the land itself. To safeguard foreign nationals' interests in homes situated on land, the government has established guarantees in Government Regulation of the Republic of Indonesia Number 103 of 2015 regarding Residential Ownership for Foreigners Residing in Indonesia, enacted on December 28, 2015.

Specifically, this regulation permits foreigners domiciled in Indonesia, whose presence contributes to the country's business, work, or investment, to own residential houses or dwellings with usage rights. These provisions are outlined in Article 1, paragraph (1) of PP 103 of 2015, in conjunction with Article 2, paragraph (1) of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 23 of 2016, which addresses foreigners or their heirs as owners of residential houses or dwellings when they are no longer domiciled in Indonesia (Permenhukham 23/2016).

In accordance with Article 11 of Government Regulation Number 103 of 2015 of the Republic of Indonesia concerning the Ownership of Residential Houses or Residences by Foreigners Residing in Indonesia, which stipulates that "Additional regulations regarding the procedures for granting, releasing, or transferring property rights over residential houses or residences of foreigners shall be determined by the Regulation of the Minister/Head of the Agency responsible for government affairs in the field of land affairs."

The Indonesian government, under the authority of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency, has subsequently issued the most recent regulation, known as Regulation Number 29 of 2016 concerning Procedures for Granting, Releasing, or Transferring Ownership of Residential Houses or Residences by Foreigners Residing in Indonesia. This regulation provides detailed information about the acquisition of residential property rights for foreigners, particularly with regard to the right of use. Article 6 of this regulation specifically addresses the Occurrence of the Right of Use concerning Foreigners as Subjects of Rights. It states the following:

- a. When a foreigner acquires a dwelling house situated on land with Hak Milik or Hak Guna Bangunan rights through methods such as sale and purchase, grants, exchanges, auctions, or other means intended to transfer land rights, the land with Hak Milik or Hak Guna Bangunan status is immediately converted into State Land and is subsequently granted to the respective foreigner with a change in the Right of Use.
- b. In the case of flats situated on land with Building Rights Title or Management Rights Title owned by foreigners through similar methods like sale and purchase, grants, exchanges, auctions, or other means intended to transfer rights, the Right of Ownership over the Flat Unit is immediately conferred to the foreigner upon the change in the Right of Use over the Flat Unit.
- c. The Land Deed Official (PPAT) is responsible for drafting the deed of rights transfer, and they shall also prepare the deed of auction for the Right of Ownership or Right to Build a dwelling house and the Right of Ownership over a Flat as outlined in paragraphs (1) and (2) for the benefit of the respective foreigner.

The right of use, known as "Hak Pakai," is granted based on the specific nature or intended purpose of land utilization or due to certain considerations related to land usage or the occupant. This right cannot be equated with "Hak Milik" (Ownership Rights), "HGU" (Right to Cultivate), or "HGB" (Right to Build) because Hak Pakai doesn't establish a full-fledged relationship between the holder and the utilized property. As per the regulations outlined in the UUPA (Indonesian Agrarian Law), foreign nationals have the privilege of acquiring Hak Pakai for land use in Indonesia but not Hak Milik. The status of this Right of Use granted to foreign nationals is a legal phenomenon that doesn't confer absolute land ownership certainty in Indonesia.

When foreign nationals participate as buyers in auctions of properties under Mortgage Rights with Land Ownership Rights status, they must adhere to the prescribed procedures for transferring these rights, as stipulated in the Minister of Agrarian Affairs' Decree/Head of the National Land Agency Number 16 of 1997 concerning Property Rights Changes to Building Rights or Use Rights and Building Rights. Consequently, the actions taken by foreign nationals align with the concept of legal certainty, which asserts that every individual, including foreign nationals, should be aware of actions that are permissible or prohibited in accordance with applicable laws and regulations. Thus, foreign nationals who acquire property rights over objects subject to mortgage rights through auctions are, by law, granted only the right of use. This is because foreign nationals are individuals who are not entitled to obtain full property rights to land in Indonesia, as articulated in Articles 21 and 26 of the UUPA, which uphold the principle of citizenship.

CONCLUSION

The minutes of the auction prepared by the Auction Officer can serve as proof of the transfer of land ownership rights to foreign individuals at the National Land Agency. It is essential to note that the validity of these auction minutes for foreign individuals is contingent upon compliance with Article 41 of Government Regulation No. 24 of 1997 concerning Land Registration.

Foreigners who acquire land through auctions are granted a specific land tenure status, which allows them to exercise control over the acquired land under the "right of use."

To establish the "right of use" status for land held by foreign nationals, it is necessary to follow the prescribed procedures for changing property rights, as outlined in Article 2 of the Decree of the Minister of Agrarian Affairs/Head of State Land Agency No. 16 of 1997 concerning Changes in Building Ownership Rights or Building Use Rights. Land use rights, including those held by foreign nationals, come with a defined time frame. These rights can be extended after the expiration of the specified period in accordance with the relevant laws and regulations.

However, in cases where a foreigner acquires a residential property on freehold land through an auction, the property is promptly converted to a "right of use" for the foreign buyer. This conversion is in accordance with the provisions stated in Article 6 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 29 of 2016, which outlines the procedures for granting, releasing, or transferring property rights on residential houses or residences to foreigners residing in Indonesia.

REFERENCES

- Adrian Sutedi, S. (2023). *Sertifikat hak atas tanah*. Sinar Grafika.
- Arba, M. (2021). *Hukum Agraria Indonesia*. Sinar Grafika.
- Fitra, F. N. (2020). Perlindungan Hukum Bagi Pemilik Sertifikat Hak Milik Yang Dieksekusi Lelang Oleh Kantor Pelayanan Kekayaan Negara Dan Lelang Tanpa Adanya Akta Pemberian Hak Tanggungan (Studi Putusan Kasasi Nomor 1180/K/Pdt/2017). *Indonesian Notary*, 2(1), 7.
- Hanapi, S. Y. (2017). Control of Land Rights for Foreign Citizens In Indonesia. *Al-Mizan (e-Journal)*, 13(1), 17–40.
- Hidayat, A. (2018). Implementasi Kebijakan Menteri Agraria dan Tata Ruang Tentang Percepatan Pelaksanaan Pendaftaran Tanah Sistematis Lengkap di Kota Bandung. *Temali: Jurnal Pembangunan Sosial*, 1(1), 100–110.

- Izza, K. F. (2022). *Penyelesaian wanprestasi perjanjian kredit dengan jaminan hak tanggungan (Studi Kasus Bank BPR BKK Kota Semarang)*. Universitas Islam Sultan Agung.
- Rachmadi, U. (2016). *Hukum Lelang*. Sinar Grafika, Jakarta.
- Rosandi, B. H. P. (2016). Akibat hukum jual beli hak atas tanah yang belum didaftarkan. *Jurnal IUS Kajian Hukum Dan Keadilan*, 4(3), 423–435.
- Sembiring, M. F. (2013). Analisis Peningkatan Status Hak Dari Hak Pakai Yang Terikat Jaminan Di Atas Hak Pengelolaan Menjadi Hak Milik. *Premise Law Journal*, 4, 14005.
- Sudiarto, S., Kurniawan, K., & Hirsanuddin, H. (2021). Kedudukan Akta Risalah Lelang Sebagai Bukti Peralihan Hak Milik Atas Tanah Bagi Warga Negara Asing. *Jatiswara*, 36(2), 149–162.
- Sutedi, A. (2020). *Implementasi prinsip kepentingan umum di dalam pengadaan tanah untuk pembangunan*. Sinar Grafika (Bumi Aksara).
- Syarifuddin, M. S. A. (2021). Kedudukan Hukum dan Keabsahan Kepemilikan Hak atas Tanah Warga Negara Asing yang Berasal dari Pewarisan. *Notaire*, 4(3), 373–398.
- Tinambunan, H. S. R., & Prasetio, D. E. (2019). Rekonstruksi Konstitusi Dalam Regional Representative Dewan Perwakilan Daerah Terhadap Fungsi Legislatif. *Masalah-Masalah Hukum*, 48(3), 266–274.
- Urip Santoso, S. H. (2019). *Pendaftaran dan peralihan hak atas tanah*. Prenada Media.