

## Legal Certainty and Implications of Land Rights for Foreign Citizens Holding a Golden Visa in Indonesia

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**Abstract:** Based on Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), foreigners are prohibited from having ownership rights to land in Indonesia. However, with the Golden Visa, foreigners who meet the investment requirements can obtain convenience in terms of long-term residence permits. This opens up the possibility that Golden Visa holders can have greater access to property in Indonesia, although limited to use rights and building use rights. This research uses normative juridical methods to analyze legal issues regarding the implications of land and property rights for foreigners holding Golden Visas in Indonesia. Based on the research results, it is concluded that the implications of the policy of granting land and property rights to foreigners holding Golden Visas in Indonesia show that, although this policy aims to attract foreign investment, there is a risk of rapid economic fluctuations due to dependence on foreign investment, which is vulnerable to external factors. Apart from that, there is the potential for misuse of residence permits and citizenship. This policy can also create social injustice, thereby widening the gap between Indonesian citizens and foreigners.

**Keywords:** Golden visa; land rights; legal certainty; property investment.

### Introduction

Land becomes one of the primary needs to be prioritized in its fulfillment, namely in terms of serving as a means to build a dwelling or residence as well as an investment facility.<sup>1</sup> Land, as a fixed asset that serves as an investment, is considered very profitable. This is because land has an economic value that increases every year; therefore, the price of land becomes more expensive due to the increasing number of individuals who need it. This investment opportunity is also recognized by many foreign nationals, which leads to many foreign nationals visiting Indonesia to invest, and generally, most investments are made in land, especially in areas considered to have economic potential.<sup>2</sup>

Along with the increasing globalization and the need for greater foreign investment, the Indonesian government continues to seek solutions to enhance investment attractiveness without neglecting national interests.<sup>3</sup> One policy implemented is the Golden Visa, a program aimed at attracting foreign nationals by granting long-term residence permits to those who make certain

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<sup>1</sup>Iwan Erar Joesoef. (2021). "Rekonstruksi Pencabutan Hak Atas Tanah Dan Konsinyasi Dalam Pengadaan Tanah Untuk Kepentingan Umum", *Masalah-Masalah Hukum*, Vol. 5, (No. 2), <https://doi.org/10.14710/mmh.50.3.2021.318-330>

<sup>2</sup>Astri Putri Aprilla, Iwan Permadi, Lutfi Efendi. (2018). "Status Hukum Hak Milik Atas Tanah Warga Negara Asing Dengan Meminjam Nama Warga Negara Indonesia", *Jurnal Ilmiah Ilmu Pendidikan dan Kewarganegaraan*, Vol. 3, (No. 2), <http://dx.doi.org/10.17977/um019v3i12018>

<sup>3</sup>Fernandez, Manuel, Mariam Mohamed Almaazmi, and Joseph Robinson. "Foreign direct investment in Indonesia: An analysis from investors perspective." *International Journal of Economics and Financial Issues* 10.5 (2020): 102. <https://doi.org/10.32479/ijefi.10330>

investments in Indonesia. The Golden Visa, which is applied by various countries around the world, offers benefits for foreign investors to stay longer, run businesses, and in some cases, allows property ownership in the destination country.<sup>4</sup>

In Indonesia, the Golden Visa has become part of a strategy to increase foreign investment, which not only supports certain economic sectors but also has the potential to enhance attractiveness in the property sector. Golden Visa holders are expected to bring substantial capital that can be allocated for property development, including housing, offices, and other business areas. However, this policy also raises questions about how regulations on land and property ownership for foreigners will be applied in the context of the Golden Visa.<sup>5</sup>

Based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), foreign nationals are prohibited from owning land in Indonesia. They are only allowed to have other rights such as usage rights, building use rights, or lease rights for buildings. Nonetheless, with the existence of the Golden Visa, foreign nationals who meet the investment requirements can obtain ease in terms of long-term residence permits. This opens the possibility that Golden Visa holders can have greater access to property in Indonesia, although limited to usage rights and building use rights.

Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration has provided a legal basis for foreigners to have usage rights over land or property units, such as apartments, for a certain period of time. However, this regulation has not specifically regulated the holders of the Golden Visa and whether they will receive special treatment regarding property ownership or remain subject to the general rules applicable to foreigners in Indonesia.

The golden visa in Indonesia is regulated by the Minister of Law and Human Rights Regulation (Permenkumham) No. 22 of 2023 concerning Visas and Stay Permits.<sup>6</sup> This regulation provides long-term residence permits to foreign nationals who make large investments or possess special skills that are beneficial to the Indonesian economy.<sup>7</sup> This golden visa is valid for a period of 5 to 10 years, depending on the amount of investment or the criteria met by the applicant. For the investor category, the general requirements include a minimum investment of IDR 2.5 billion for individuals and IDR 5 billion for companies, whereas experts are required to have specific competencies in fields that have the potential to contribute positively to economic growth. This policy is designed to encourage sustainable investment and support national development priorities in various strategic sectors.<sup>8</sup>

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<sup>4</sup>Dandi Fakhriza. (2023). "Golden Visa Granting Policy As An Effort To Investment Attraction In Indonesia", *Untag Law Review*, Vol. 7, (No. 3), p. 83-91. <http://dx.doi.org/10.56444/ulrev.v7i2.4422>

<sup>5</sup>Nisrina Arumdanie, Margaretha Hanita, & Donny Yoesgiantoro. (2024). "The Urgency of Indonesian Golden Visa Policy: A Comparative Study". *Journal of Social and Political Sciences*, Vol.7, (No.2), p. 103-109. 10.31014/aior.1991.07.02.491

<sup>6</sup>Nursanto, Gunawan Ari, et al. "Policy Diffusion, Digitalisation, and Governance Gaps in the Implementation of Indonesia's Golden Visa Programme." *Journal Of Global Strategic Studies* 5.2 (2025): 114-130. <https://orcid.org/0000-0002-1863-8243>

<sup>7</sup>Widiatedja, I. G. N. P., and I. Nyoman Suyatna. "Job creation law and foreign direct investment in tourism in Indonesia: Is it better than before." *Udayana Journal of Law and Culture* 6.1 (2022): 62-82. <https://doi.org/10.24843/UJLC.2022.v06.i01.p04>

<sup>8</sup>Imigrasi. (2023). "Aturan Hukum Golden Visa Disahkan, Tarik Orang Asing Berkualitas untuk Berinvestasi". diakses dari, [https://www.imigrasi.go.id/siaran\\_pers/2023/09/02/aturan-hukum-golden-visa-disahkan-tarik-orang-asing-berkualitas-untuk-berinvestasi?lang=id-ID](https://www.imigrasi.go.id/siaran_pers/2023/09/02/aturan-hukum-golden-visa-disahkan-tarik-orang-asing-berkualitas-untuk-berinvestasi?lang=id-ID). Diakses pada 18 November 2024.

In this context, the Golden Visa is expected to serve as a catalyst that can attract more foreign investment to the property sector.<sup>9</sup> However, the government also needs to be cautious in formulating related policies to continue protecting national interests, especially in terms of the management and distribution of land as a limited resource. Therefore, it is essential to investigate further how the Golden Visa policy will be implemented in relation to the rights of foreign nationals to own land and property in Indonesia, as well as the implications of this policy in the country.

This research is different from previous studies that discuss the ownership rights of land by foreigners or studies about the Golden Visa in Indonesia. Previous research focused on the implementation of the golden visa to facilitate foreigners in making investment in Indonesia.<sup>10</sup> The following research discusses land ownership by foreign nationals from the perspective of laws and regulations in Indonesia.<sup>11</sup> Other research focuses on discussing the responsibility of Notaries in the creation of nominee deeds in relation to land ownership by foreign nationals.<sup>12</sup> Other research discusses the effectiveness of Golden Visa regulations in Indonesia.<sup>13</sup> Based on comparisons with previous studies discussing property ownership rights for foreigners as well as research on the Golden Visa in Indonesia, it can be stated that this study has novelty value; this research will specifically discuss the problem formulations below.

## Method

This research uses a normative legal research method that focuses on the analysis of written legal norms and relevant legal doctrines. As explained by Peter Mahmud Marzuki, legal research is an effort to find the truth of coherence between legal rules and legal principles to address specific juridical issues. In this study, the researcher uses primary legal materials consisting of authoritative regulations such as the Basic Agrarian Law (UUPA), the Job Creation Law, and Government Regulation No. 18 of 2021, supported by secondary legal materials in the form of academic literature and scientific journals. All these materials are analyzed to examine the synchronization between the Golden Visa policy and the national land system in order to ensure legal certainty for foreign legal subjects in Indonesia.

In-depth analysis is conducted through three main approaches, namely the statutory approach, the conceptual approach, and the philosophical approach. The statutory and conceptual approaches are used to examine the alignment of regulations and to define the limits of land ownership based on the principle of horizontal separation. Meanwhile, the philosophical approach is applied to test this policy based on Gustav Radbruch's theory regarding the values of justice, utility, and legal certainty. The goal is to ensure that granting land rights to Golden Visa holders not

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<sup>9</sup>Kristin Surak and Yusuke Tsuzuki. "Are golden visas a golden opportunity? Assessing the economic origins and outcomes of residence by investment programmes in the EU." *Journal of Ethnic and Migration Studies* 47.15 (2021): 3367-3389. <https://doi.org/10.1080/1369183X.2021.1915755>

<sup>10</sup>Aldy Christian Tarigan, et al. "Pemberlakuan Golden Visa Mempermudah Investor Asing Menanamkan Modal Pada Perusahaan Lokal." *Madani: Jurnal Ilmiah Multidisiplin* 1.4 (2023).

<sup>11</sup>Ega Permatadani & Anang Dony Irawan. (2021). "Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia". *Khatulistiwa Law Review*, Vol. 2, (No.2), p. 348-359. <https://doi.org/10.24260/klr.v2i2.356>

<sup>12</sup>M. Edwin Azhari, Ali Murtadho, Djauhari Djauhari. (2018). "Tanggung Jawab Notaris Dalam Pembuatan Akta Perjanjian Nominee Dalam Kaitannya Dengan Kepemilikan Tanah Oleh Warga Negara Asing Di Lombok", *Jurnal Akta*, Vol. 5, (No.1), p. 43-50. <http://dx.doi.org/10.30659/akta.v5i1.2530>

<sup>13</sup>Mohammad Thoriq Bahri. (2023). "Navigating Indonesia's Golden Visa Scheme Through Comparative Legal Policy Analysis". *International Comparative Jurisprudence*, Vol. 19, (No.1), p. 92-110.

only provides macroeconomic benefits but also remains in line with Indonesia's legal ideals (*rechtsidee*), which uphold agrarian sovereignty and justice for all people.

## Results and Discussion

### Legal Certainty Regarding Land and Property Rights for Foreign Nationals Holding a Golden Visa in Indonesia

The Golden Visa is a policy introduced by the Indonesian Government to provide special visa facilities for Foreign Nationals (FNs) who can make contributions in the form of expertise, skills, or financial support through investments. The Golden Visa is a special visa given to foreign nationals who make investments or provide contributions in large amounts to the Indonesian economy. This Golden Visa grants long-term residence permits and various other privileges, including the right to property ownership. This Golden Visa was introduced as part of the government's efforts to attract foreign investment and encourage national economic growth.<sup>14</sup>

The use of the Golden Visa by eligible foreign nationals as stipulated in the laws and regulations can provide long-term residence permits for these foreign nationals in Indonesia, which is expected to support economic growth and improve the quality of human resources. Based on Article 184 of the Regulation of the Minister of Law and Human Rights (Permenkumham) No. 22 of 2023, the Golden Visa is classified as a grouping of Limited Stay Visa, Limited Stay Permit, Permanent Stay Permit, and Re-entry Permit for a certain period, with the purpose of activities including investment, family reunion, repatriation, and a second home.<sup>15</sup>

In relation to land rights, Golden Visa recipients who make investments in Indonesia have the potential to obtain land use rights in Indonesia in accordance with applicable laws. Land rights grant the holder the authority to use the land for development purposes (non-agricultural) or to derive benefits from the land, such as for agriculture, fisheries, livestock, and plantations. This allows foreign nationals holding a Golden Visa to become more involved in productive sectors, both through property development and commercial land utilization, supporting local economic activities and meeting investment permit requirements set by the government.<sup>16</sup>

Land rights consist of various kinds of rights that can be obtained based on transactions, legal actions, or statutory provisions that regulate them. Broadly speaking, there are only two types: rights controlled by individuals or legal entities and rights controlled by the state.<sup>17</sup>

For foreigners, the prohibition on ownership of land with freehold rights applies in accordance with Article 21 of the Basic Agrarian Law, and legal entities wishing to be domiciled in Indonesia must meet the requirements set by the government. This is an effort to ensure that land in Indonesia is not owned by foreign nationals because it is an absolute right of Indonesian citizens.<sup>18</sup> In addition, the principle of nationality also applies, which only grants rights to Indonesian citizens

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<sup>14</sup> Ita Rahmasari Mujamil, Kuniawaty Iskandar, & Riska Sri Handayani. (2024). "The Potential Problems of The Golden Visa Policy in The Context of Globalisation and Social Networks". *Asian Journal of Engineering, Social and Health*, Vol. 3 (No.6), p. 1223-1238. <https://doi.org/10.46799/ajesh.v3i6.340>

<sup>15</sup> Jufrian Murzal. (2024). "Golden Visa Indonesia, Ini Pengertian dan Dasar Hukumnya", *Hukum Online*. Diakses dari: <https://www.hukumonline.com/klinik/a/igolden-visa-i-indonesia--ini-pengertian-dan-dasar-hukumnya-lt66a3ea8cd0258/>. Diakses pada 19 Nov 2024.

<sup>16</sup> Urip Santoso, *Hukum Agraria Kajian Komprehensif*, (Jakarta: Kencana Prenadamedia, 2012), p. 84.

<sup>17</sup> Jimmly Joses Sembiring, *Panduan Mengurus Sertifikat Tanah*, (Cet. 1, Jakarta: Visimediia, 2010), p. 6

<sup>18</sup> Urip Santoso, *Hukum Agraria Kajian Komprehensif*, (Jakarta: Kencana Prenadamedia, 2012), p. 17.

in terms of land ownership, thereby closing off the possibility for foreigners to own it. The application of the principle of nationality in the Basic Agrarian Law, especially regarding land ownership, results in different treatment between Indonesian citizens and foreign nationals.<sup>19</sup> Such differences in treatment are considered reasonable, especially in relation to the position of land for the Indonesian people, who have an important standing.

Land rights not only include rights granted to Indonesian citizens, but also involve regulations governing the involvement of foreign citizens in property ownership.<sup>20</sup> In this context, the Golden Visa policy is a strategic step by the government to expand foreign investment opportunities while still prioritizing national interests. By differentiating the types of land rights that can be owned by Indonesian citizens and foreigners, the government seeks to create a balance between the needs of foreign investment and the protection of citizens' constitutional rights. Therefore, although foreign nationals are prohibited from owning freehold land, they are allowed to invest through the Golden Visa mechanism, which allows them to hold usage rights, building use rights, and ownership rights over condominium units. This reflects the government's commitment to promoting economic growth without sacrificing the fundamental rights of Indonesian citizens to land and natural resources.

In general, the 1945 Constitution (UUD 1945) and Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) regulate land ownership in Indonesia. Based on Article 33, paragraph 3 of the 1945 Constitution, it is stated that 'The earth, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.'<sup>21</sup> This indicates that land ownership in Indonesia, in principle, can only be held by Indonesian citizens.

Based on the Regulation of the Minister of Law and Human Rights (Permenkumham) Number 22 of 2023 regarding Visas and Stay Permits, as well as the Regulation of the Minister of Finance (PMK) Number 82 of 2023 concerning Types and Tariffs on Types of Non-Tax State Revenue for Urgent Needs for Golden Visa Services applicable at the Ministry of Law and Human Rights, three types of foreign nationals are eligible to receive a Golden Visa, namely; (1) Individual investors who will establish a company in Indonesia, with a minimum investment value of 2.5 million US dollars or equivalent to IDR 38 billion to obtain a special stay permit for 5 years. For a 10-year stay, the required investment amount is 5 million US dollars or IDR 76 billion; (2) Corporations that invest their capital with a minimum investment value of 25 million US dollars or approximately IDR 380 billion. The Golden Visa for corporations will later be granted to the company's board of directors and commissioners for a 5-year residence period. Meanwhile, for a 10-year residence period, the required investment value is 50 million US dollars, and for individual foreign investors who do not establish a company in Indonesia. However, to be able to obtain a special residence permit for 5 years, they must place funds amounting to 350 thousand US dollars or around IDR 5.3 billion in government bonds, public company shares, or savings placements. Meanwhile, for a 10-year

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<sup>19</sup> Michael Wisnoe, Tesis : *Kepemilikan Hak Atas Tanah bagi Warga Negara Asing dan Kewargangaraan Ganda* (Depok: Fakultas Hukum Universitas Indonesia, 2012), p. 17.

<sup>20</sup> Urip Santoso. (2015). "Perolehan Tanah Oleh Pemerintah Daerah Yang Berasal Dari Tanah Hak Milik", *Perspektif*. Vol. 20, (No.1), p. 1-9, <https://doi.org/10.30742/perspektif.v20i1.139>

<sup>21</sup> Indah Sari. "Hak-hak atas tanah dalam sistem hukum pertanahan di Indonesia menurut Undang-Undang Pokok Agraria (UUPA)." *Jurnal Mitra Manajemen* 9.1 (2017). <https://doi.org/10.35968/jmm.v9i1.492>

residence period, the investor must place a minimum of 700 thousand US dollars or around IDR 10.6 billion.<sup>22</sup>

The Golden Visa policy in Indonesia, which is formally regulated through the Minister of Law and Human Rights Regulation Number 22 of 2023, is a tangible manifestation of the shift in our immigration law paradigm. Law is no longer merely seen as an instrument of guarding the gates of sovereignty (gatekeeper), but has transformed into a catalyst for national economic development. This transformation is clearly visible in the division of investment clusters based on the amount of capital and the form of involvement of foreign legal entities in Indonesia.

The government sets a very specific threshold for individual investors who want to establish a company, which ranges from 2.5 million to 5 million US dollars. From the perspective of the Development Law Theory coined by Prof. Mochtar Kusumaatmadja, this regulation reflects the use of law as a 'tool of social engineering.' By setting a minimum figure of around IDR 38 billion, the law is directing the inflow of foreign capital into the real sector, which has a multiplier effect, such as employment absorption and technology transfer.

For corporations, the scale of investment has increased drastically to 50 million US dollars. Theoretically, granting residence permits to the board of directors and commissioners in this category is an application of Otto von Gierke's Organ Theory. The law recognizes that a legal entity is a reality that can only operate through its organs. Therefore, immigration facilities are provided to the individuals who move the 'body' of the corporation as a form of legal protection for the continuity of large-scale investment within Indonesian sovereignty.

For individual investors who do not establish a company, the country provides a portfolio investment route through government bond instruments or shares of public companies with a minimum value of 350 thousand to 700 thousand US dollars. This approach can be analyzed through Jeremy Bentham's Utilitarian Theory, which emphasizes that the law should provide the greatest benefit. Although investors in this category do not build physical infrastructure, placing their funds in the capital market provides benefits in the form of financial liquidity and stability for the country. In return (reciprocity), the country provides legal certainty in the form of long-term residence permits. This creates harmony between the investor's interest in securing their assets and the country's interest in strengthening foreign exchange reserves.

Overall, the differentiation in residence periods between 5 and 10 years based on investment value is a manifestation of the Theory of State Sovereignty. Under international law, a state has the absolute right to determine the requirements for foreigners who wish to settle. However, this sovereignty is exercised rationally through the Golden Visa scheme. Setting a high investment threshold serves as a legal filter to ensure that incoming legal subjects have strong financial credibility. Legally, this is an effort at Legal Risk Mitigation, particularly to prevent global money laundering offenses. In other words, the Indonesian government uses economic parameters as a standard for proving integrity for foreign nationals who wish to obtain the privilege of a longer stay in the country.

Through this classification, Indonesian agrarian and immigration laws no longer operate independently, but rather synergize within an investment ecosystem. The legal implication is the

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<sup>22</sup>Della Mariska and Firmansyah Putra. "Kebijakan Golden Visa untuk Warga Negara Asing Berdasarkan Peraturan Perundang-Undangan Di Indonesia." *Limbago: Journal of Constitutional Law* 5.3 (2025): 14-32. <https://doi.org/10.22437/limbago.v5i3.49435>

emergence of a new "class" of foreign legal subjects who have strong economic ties with the country, which ultimately demands more efficient and transparent public services and legal protection from the Indonesian government.

Furthermore, with the existence of the Golden Visa policy, foreign nationals holding this visa are granted broader rights regarding property ownership in Indonesia. The following are some forms of land and property rights that can be owned by Golden Visa holders according to Government Regulation (PP) Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration.<sup>23</sup>

### 1. Right of Use

Right of use is the right to use and/or collect the yields from land directly controlled by the State or land owned by another person, which grants authority and obligations as determined in the decision of its grant by the authorized official or in an agreement with the landowner, which is not a lease agreement or a land management agreement, as long as it does not conflict with the spirit and provisions of this law.<sup>24</sup>

Based on Article 41 of the UUPA and Article 45 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, it is stated that Golden Visa holders can also be granted the Right to use state land, management rights land, or privately-owned land, for a period specified in the agreement or in accordance with statutory provisions. This Right to Use grants the right to utilize or derive benefits from the land, for a period of up to 25 years, which can be extended and renewed.

### 2. Right to Build (HGB)

Based on Article 35 of the UUPA and Article 45 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration, it states that Golden Visa holders can have Building Use Rights (HGB) on land for a period of up to 30 years, which can be extended for 20 years and renewed for another 30 years. This HGB allows Golden Visa holders to construct and own buildings on land that is not their own.

### 3. Ownership of Apartment Units

Ownership is an inheritable, strongest, and fullest right that a person can have over land. Based on Article 144 and Article 145 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, it is stated that Golden Visa holders can also own residential properties, such as apartments or condominiums, on land with the status of Right to Use. This is part of the government's effort to attract more foreign investors to the property sector in Indonesia.<sup>25</sup>

The Golden Visa policy in Indonesia carries significant implications for the land ownership structure for Foreign Nationals (FNs). The granting of land rights is not merely an administrative matter, but a manifestation of a shift in agrarian law politics that seeks to balance the protection of national sovereignty with the needs of global investment.

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<sup>23</sup> Rokilah, Mia Mukaromah' "Pemilikan Hak Atas Tanah bagi Warga Negara Asing", *Ajudikasi: Jurnal Ilmu Hukum*, vol. 2, no.2, Desember 2018, p. 137-150. <https://doi.org/10.30656/ajudikasi.v2i2.972>

<sup>24</sup> Suparman Usman, *Hukum Agraria di Indonesia* (Serang : UIN "SUHADA" Press, 2014), h. 415.

<sup>25</sup> Imanuel Rahmani. (2018). "Perlindungan Hukum Kepada Pembeli Dalam Kepailitan Pengembang (Developer) Rumah Susun". *Jurnal Hukum Bisnis Bonum Commune*, Vol. 1, (No.1), pp. 73-88. <https://doi.org/10.30996/jhbbc.v0i0.1758>

Within the framework of Indonesian law, the Right to Use (Hak Pakai) becomes the main gateway for Golden Visa holders to control land. Based on Article 41 of the Basic Agrarian Law (UUPA) as expanded by Government Regulation No. 18 of 2021, the Right to Use grants the authority to use or derive benefits from state land or land owned by others. This legal narrative aligns with the Legal Certainty Theory proposed by Jan Gijssels, in which the law must be able to protect legal subjects through clear, stable, and predictable rules. With a total duration reaching 80 years (initial 30 years, extended by 20 years, and renewed for 30 years), the government provides an essential 'time guarantee' for foreign investors to feel legally secure in controlling their property assets in Indonesia. Legal Certainty and Implications of Land Rights for Foreign Citizens Holding Golden Visas in Indonesia.

Although holders of the Golden Visa individually cannot directly own HGB due to the legal subject restrictions in Article 36 of the UUPA, they can enjoy it through a capital participation mechanism in a legal entity (PT PMA). Theoretically, this refers to the Legal Fiction Theory by Friedrich Carl von Savigny.<sup>26</sup> Savigny<sup>27</sup> viewed legal entities as artificial legal subjects created by the state to facilitate economic interests. In this context, Golden Visa holders act as controllers behind the 'corporate veil' (piercing the corporate veil), allowing them to carry out physical development on land with HGB status. This indicates that our agrarian law is adaptive to the needs of international corporations without abandoning the basic principle that HGB is a right of limited nature.

The most radical breakthrough for Golden Visa holders is access to owning property units through the Ownership Rights on Flat Units (HMSRS). Article 144 of Government Regulation No. 18 of 2021 allows foreigners to own apartments on land with Use Rights or Building Rights (HGB). This legal phenomenon can be analyzed using the Horizontal Split Theory, which is deeply rooted in customary law and adopted into national law.<sup>28</sup> As explained by agrarian law expert Boedi Harsono, this principle separates ownership of land from the objects on it.<sup>29</sup> Through this theory, holders of the Golden Visa can have the "strongest and fullest" rights over their housing units (property), but are still limited by the rights to the parent land whose status is not Freehold. This is intended to ensure that sovereignty over land remains in the hands of the state or Indonesian citizens, in accordance with the mandate of the State Sovereignty Theory, which emphasizes that the state has the ultimate right to control the earth for the prosperity of the people.

Overall, the granting of these rights must also be viewed through the lens of the Social Function of Land Theory, which is the soul of the Basic Agrarian Law (UUPA). Legal scholar Leon Duguit stated that a person's subjective rights are limited by their social obligations. Therefore, the legal implication for Golden Visa holders is not only about acquiring rights but also about compliance with spatial planning regulations and the obligation to relinquish those rights if their

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<sup>26</sup>M. Zulfa Aulia. "Friedrich Carl von Savigny tentang hukum: Hukum sebagai manifestasi jiwa bangsa." *Undang: Jurnal Hukum* 3.1 (2020): 201-236. <https://doi.org/10.22437/ujh.3.1.201-236>

<sup>27</sup>Tahsya Nabillah, et al. "Hakikat Keilmuan Hukum Sistem Civil Law dalam Perspektif Teori Hukum Murni." *Jurnal Hukum Legalita* 7.2 (2025): 210-220. <https://doi.org/10.47637/legalita.v7i2.2003>

<sup>28</sup>Sartika Intaning Pradhani. "Pendekatan pluralisme hukum dalam studi hukum adat: Interaksi hukum adat dengan hukum nasional dan internasional." *Undang: Jurnal Hukum* 4.1 (2021): 81-124. <https://doi.org/10.22437/ujh.4.1.81-124>

<sup>29</sup>Sri Harini Dwiyatmi. "Asas Pemisahan Horizontal (Horizontale Scheiding Beginsel) Dan Asas Perlekatan (Verticale Accessie) Dalam Hukum Agraria Nasional." *Refleksi Hukum: Jurnal Ilmu Hukum* 5.1 (2020): 125-144. <https://doi.org/10.24246/jrh.2020.v5.i1.p125-144>

immigration status ends. If the visa holder no longer meets the requirements, the principle of 'Droit de Suite' applies, where the rights must be transferred within a certain period to prevent a legal vacuum or illegal land possession by unauthorized subjects.

### **Legal Implications of the Policy Granting Land and Property Rights to Foreign Nationals Holding a Golden Visa in Indonesia**

The implementation of the golden visa is not easy for foreign nationals. This golden visa is specifically intended for foreign nationals who can make significant contributions, especially in the economic field, through investment.<sup>30</sup> The main purpose of launching the golden visa is to facilitate residency regulations for foreign investors and support their investment in Indonesia, particularly in local companies. With these simpler regulations, the government hopes that foreign investors can play a role in driving Indonesia's economy. However, the implementation of the golden visa also presents significant challenges for the government in encouraging rapid investment growth in Indonesia.

With the implementation of the golden visa, there is a direct positive impact on the business sector, particularly in attracting foreign investment. The golden visa opens opportunities for local companies to receive capital injections from abroad, which can directly expand their business reach and capacity. Through this policy, companies and SMEs have a greater chance to grow with significant foreign investment support. Over time, the government continues to encourage local companies and SMEs to be increasingly active in attracting foreign investors to invest in Indonesia, strengthening the economy, and expanding business opportunities.

In various countries, the implementation of golden visas is becoming increasingly strict, with specific requirements tailored to the economic priorities and development of each country. For example, Singapore imposes a minimum investment requirement of \$1,800,000, a rather large figure to stimulate its economy. In addition to investment, the country also offers golden visa opportunities to foreigners with high-level expertise in technology and healthcare, who are considered capable of making significant contributions to innovation and societal well-being.<sup>31</sup>

In Indonesia, the implementation of the golden visa is focused on sustainable investment, which is expected to build a long-term economy.<sup>32</sup> According to the Directorate General of Immigration, these requirements are implemented to attract investors who are seriously committed to Indonesia's progress. Currently, around 20 foreign investors have begun investing in local companies in Bali and supporting the development of the new capital city, Nusantara Capital. This situation further encourages the government to accelerate the flow of golden visas for foreign investors, with the hope of speeding up economic growth in various sectors and strengthening Indonesia's competitiveness in the eyes of the world.<sup>33</sup>

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<sup>30</sup> Wardana, IGP Anom Kresna, Tsalsa Syah Putri, Tunggal Bayu Laksono, (2021). "Pengawasan Hukum Terhadap Penyalahgunaan Izin Tinggal Terbatas Penanaman Modal Asing". *Jurnal Gayana: Jurnal Ilmu Sosial dan Humaniora* Vol.4 (No.2), p. 774-795. <https://doi.org/10.37329/ganaya.v4i2.1433>

<sup>31</sup> Lusya Novita Sari. (2023). "Golden Visa Keuntungan -Kerugian dan Kemungkinan Penerapannya di Indonesia". Diakses dari: <https://setkab.go.id/golden-visa-keuntungan-kerugian-dan-kemungkinan-penerapannya-di-indonesia/>, diakses pada 19 Nov 2024.

<sup>32</sup> Zazili, Ahmad, Fathoni, Ade Arif Firmansyah, (2016). "Pemberian Insentif Penanaman Modal sebagai Upaya Daya Tarik Investasi di Daerah". *Jurnal Cakrawala Hukum*. Vol. 7 (No. 1), p. 112-122. <https://doi.org/10.26905/idjch.v7i1.1786>

<sup>33</sup> Aldy Christian Tarigan, et al. "Pemberlakuan Golden Visa Mempermudah Investor... (2023).

For countries that implement a Golden Visa policy, this policy provides economic and fiscal benefits through the stimulation of private sector investment and increased government fiscal revenue. However, granting a Golden Visa also does not rule out the possibility of negative implications, particularly causing fiscal and macroeconomic risks such as rapid economic fluctuations (boom and bust cycles) and property bubbles. The inflow of investment from the Golden Visa mechanism tends to be vulnerable and easily influenced by external factors; for example, if a more attractive investment scheme is offered by another country, investors may withdraw their investments from one country and move them to another country with a more appealing investment scheme.

The policy of granting residence permits and citizenship based on investment has also received criticism because the policy is associated with selling citizenship. International law recognizes two principles related to citizenship, namely *jus soli* (citizenship is determined by place of birth) and *jus sanguinis* (citizenship is determined by blood relation). Granting citizenship based on investment is considered to deviate from these two principles. In addition, the policy of granting residence permits and citizenship based on investment is also criticized as an unfair and discriminatory policy, considering that only people who have a large amount of money will get exclusive rights to live, work, and conduct business in a country.<sup>34</sup>

In addition, the Golden Visa scheme also poses risks related to the misuse of residence and business permits, as well as an increase in cases of corruption, tax evasion, money laundering, and the financing of terrorist groups. These risks have led to the suspension of the Golden Visa scheme in several European countries, including Hungary, which ended the Hungarian Residency Bond Programme in July 2018, the United Kingdom, which stopped issuing Investor visas (Tier 1) in February 2022, Bulgaria, which discontinued the Citizenship and Residency by Investment program in April 2022, and lastly Portugal, which terminated the Residence Permit for Investment program in February 2023. Furthermore, the push to end Golden Visa programs in EU member states is also influenced by the Russian invasion of Ukraine, considering that Russian citizens are the largest holders of Golden Visas from EU member countries.

The negative implications of policies granting residence permits and citizenship based on investment are not only a concern for the issuing countries, but also for third-party countries. In January 2022, the European Commission proposed the suspension of bilateral agreements related to visa-free programs with Vanuatu due to the misuse of Vanuatu's Citizenship by Investment Program. To attract investors, the Vanuatu government promoted the Citizenship by Investment Program, with one of the enticements being visa-free access to the European Union, even though the bilateral agreement between the European Union and Vanuatu was not intended to provide an opportunity for foreigners who acquired Vanuatu citizenship to bypass European Union visa requirements.<sup>35</sup>

Criticism of this golden visa policy also includes potential issues of security and social stability in the host country. Granting large investments from foreign nationals who are given long-term residence permits or citizenship can trigger changes in local social and demographic dynamics,

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<sup>34</sup>Aldy Christian Tarigan, et al. "Pemberlakuan Golden Visa Mempermudah Investor..." (2023), p. 502.

<sup>35</sup>Andi Bagus Abady Taohid. *Implikasi Hukum Pemberian Hak Guna Usaha Kepada Pemegang Golden Visa Terhadap Sistem Agraria Nasional= The Legal Implications of Granting Cultivation Rights to Golden Visa Holders on The National Agrarian System*. Diss. Universitas Hasanuddin, 2025.

especially in areas that attract foreign investors, such as Bali. Many parties are concerned that the increasing number of foreign residents can affect local culture and identity, as well as widen the socioeconomic gap between locals and newcomers. In addition, with foreign investors possessing large capital, competition for local resources, such as land and housing, may increase, which could ultimately lead to property prices soaring and make access to property more difficult for residents. This confirms that the golden visa policy not only impacts the economic aspect, but also needs to be considered from a social and cultural perspective to ensure that negative impacts can be minimized.

## Conclusion

The golden visa policy in Indonesia is designed to attract foreign investment and stimulate economic growth by providing Foreign Nationals (FNs) access to long-term residence permits and rights to certain properties. According to Article 184 of the Regulation of the Minister of Law and Human Rights (Permenkumham) No. 22 of 2023, the Golden Visa includes various forms of residence permits for the purposes of investment, family reunification, repatriation, and second homes. In addition, Golden Visa holders can acquire land rights through mechanisms such as usage rights, building use rights, and ownership rights over condominium units, in accordance with Articles 41 and 35 of Law No. 5 of 1960 concerning the Basic Agrarian Principles (UUPA) and Government Regulation No. 18 of 2021. The implications of the policy granting land and property rights to foreign nationals holding Golden Visas in Indonesia show that although this policy aims to attract foreign investment, its negative impacts are quite significant.

First, there is a risk of rapid economic fluctuations due to dependence on foreign investment, which is vulnerable to external factors. In addition, the potential misuse of residence permits and citizenship can lead to an increase in cases of corruption, tax evasion, and money laundering, which has been the reason for some European countries to halt their Golden Visa programs, as done by Hungary, the UK, Bulgaria, and Portugal. This policy can also create social injustice, where only individuals with substantial financial resources gain exclusive rights to reside and invest, thereby widening the gap between Indonesian citizens and foreign nationals.

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