

LEGAL PERSPECTIVES ON FOREIGN LAND OWNERSHIP: BALANCING INVESTMENT, EQUITY, AND SOVEREIGNTY

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Abstract

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This study seeks to analyze the distinctions in land ownership arrangements for foreigners in Indonesia and Thailand, while also examining the correlation between land ownership restrictions and the principles of equity and human rights. Both qualitative and quantitative data were utilized. Darin-Drabkin (2013) explains that the concept of land ownership is closely linked to the social, economic, and political structures, in addition to the developmental phase of a country. The analysis indicates that Thailand offers foreigners the chance to acquire ownership rights, contingent upon making a specified investment. Thailand imposes restrictions on foreign ownership of agricultural land. This stands in contrast to Indonesia, where foreign investment in agriculture is permitted. This policy guarantees that land remains accessible for underprivileged communities, thereby preventing external control. This aligns with United Nations Resolution No. 1803 (XVII) concerning State Sovereignty Over Natural Resources and the International Convention on Economic, Social, and Cultural Rights, which empowers developing countries to prioritize their citizens in resource ownership, including land. The researchers suggest that, in formulating land policies, the government should prioritize the needs of citizens in accordance with the principle of nationality and implement systematic measures to prevent the monopolization of land ownership by foreign legal entities.

Keywords: Ownership, Land, Foreigners, Indonesia, Thailand

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1. INTRODUCTION

In developing countries, land has been recognized as one of the primary sources of livelihood, where most of the people's economic activity is performed conventionally (Hermawan et al., 2025). The discussion of land ownership in Asia is important because Asia is a magnet in the era of globalization. Land, as the foundation of all activities, is the object of competition among parties. Asia's total land area is 3001 million ha or 22.9% of the total land area worldwide (Fladvad et al., 2020). One of the important discourses on land ownership in Asia is the type of land that foreigners can own. This discourse is important because it relates to the rapid investment and human movement flows, including foreign workers to countries in Asia, including Thailand and Indonesia.

The regulation of land for foreign workers has become an interesting topic in the era of globalization and free trade because it affects the flow of labor migration from one country to another (Constable & Kuasirikun, 2007; Pichler et al., 2021; Colic-Peisker, 2016). This phenomenon makes the world more reconnected so that the flow of people, goods, and services is also increasing from one country to another. One of the countries that is also visited by foreign workers is Indonesia (Bartle, 2010). The number of foreign workers in Indonesia in 2021 reached 88,271 people who needed land to support their lives. Therefore, national law should respond and meet the needs of citizens and foreign legal entities for land. This phenomenon not only happened in Indonesia but also in Thailand.

A comparative study of the differences in the concept of land ownership in Asia is important because it relates to the ease of investment in the country. This is because land is a basic or primary need of all investment activities. The ease of land ownership and its period are elements that must be taken into account by entrepreneurs in carrying out investment activities. The easier the land policy in a country, the easier it will be for people to invest in the country. Therefore, the easier it is for a country to give land to foreigners and foreign legal entities to carry out its activities, the more increasing the investment (Polack, 2012). Therefore, countries in Asia, including Southeast Asia, are currently adjusting their land policies to increase investment in their countries, including Thailand and Indonesia.

Thailand is a country that has a high dependence on foreign investment because, currently, foreign investment or outward direct investment in Thailand has exceeded investment made by domestic companies. This caused economic growth in Thailand to be greatly influenced by foreign investment, resulting in high labor absorption. However, currently, the growth of foreign investment in Thailand is experiencing a negative trend. In the first quarter of 2022, Thailand's economic growth declined by 25%. Thailand wants to upgrade its status from a middle-income country to a high-income country by 2037, so that various efforts to attract investment are carried out, including policy adjustments in the land sector (Larsson, 2007).

To respond to this reality, on October 25, 2022, the Thai government revised its land law (Act promulgating the Land Code B.E. 2497 of 1954) and allowed foreigners to obtain land ownership.

The granting of land ownership causes foreigners in Thailand to be equal to Thai citizens. The freedom for foreigners to own land increased the investment. However, it raises problems in the fairness of land ownership for Thai citizens and the issue of the country's sovereignty over its territory.

The policy to grant land ownership to foreigners is also applied by Indonesia (Asian Development Bank [ADB], 2019). In 2020–2024, the investment growth target in Indonesia is 6.6–7% which can only be achieved if there is an ease of investment, including changes in land policies for foreigners (The National Medium Term Development Plan 2020–2024, 2020). In the past, Indonesia only allowed foreigners and foreign legal entities to own land with the status of rights to use. Thus, foreigners can only become owners of flats that are on land with rights to use. Currently, foreigners can become owners of flats built on land with building rights. In addition, the government also extended the term of land use rights that can be owned by foreigners from a total of 70 to 80 years.

The above description shows that there is an economic influence on land law in Thailand and Indonesia. When the two countries want to increase investment, land liberalization for foreigners is also carried out by the countries. Thus, there is a causal relationship between these two. The comparison of land policies in Thailand and Indonesia above shows that although both make it easier for foreigners to own land, Thailand takes a policy by granting full ownership to foreigners, while the Indonesian government only expands the scope of rights that can be granted and increases the term of land rights.

The relaxation of providing land rights for foreigners does cause problems because it is related to the equality of land ownership for the people of the country. This is because all countries are established based on social contracts to provide welfare for their people, including in terms of land ownership. Suppose foreigners can own land in the territory of a country. In that case, there is a potential for dominance of land ownership by foreigners, and an equal distribution of land to the citizens of that country will be difficult to achieve. On the other hand, there is the issue of sovereignty because control of territory (land) has a strategic position in realizing the sovereignty of a country. If the state considers these two reasons, it tends to limit the ownership of land for foreigners.

On the other hand, the restriction of land ownership rights for foreigners is also increasingly problematic because, in the era of globalization, all countries must treat people equally, including in terms of land ownership for foreigners. This means that there should be no distinction in land rights between the people of the country and foreigners. Then, there is the issue of human rights, where land ownership is one of the parts of human rights whose fulfillment is the responsibility of all countries. Moreover, there is a need in all countries to increase investment to stimulate the country's economic growth. Referring to these reasons, the state will tend to provide ease of land rights for other countries, as done by Thailand and Indonesia.

This description clearly shows that there is a relationship between the economy and law, where economic policies affect the law. Therefore, this study is an interdisciplinary study that does not place the law as something autonomous, as in positivism. An open interdisciplinary study leads the discussion of a problem to be carried out

holistically and comprehensively. Considering such conditions, the granting of land rights to foreigners and its restrictions put the countries of both Indonesia and Thailand in a dilemma. Therefore, this paper tries to explain the differences in the causes of the granting and restriction of land for foreigners in Thailand and Indonesia and to examine the alignment between the restrictions on land for foreigners from the view of equity, human rights, and sovereignty.

This article is different from the article of Ming Kirk Tan (2004) because it only discusses the influence of the difference in legal traditions between Indonesia and Singapore on land management for foreigners. This is also different from the work of Qin (2020), which focused on the history of land policy for foreigners in the United Kingdom, so it was monodisciplinary. Another comparative paper was Banski (2011), which analyzed the influence of land policy for foreigners on agricultural land ownership in Poland. The difference between this paper and the previous works is that this paper discusses the differences in policies for foreigners between Indonesia and Thailand from the point of view of equity, economy, human rights, and sovereignty so that the analysis carried out is interdisciplinary and also does not specifically examine the influence of land ownership for foreigners for investment in land ownership by farmers.

Furthermore, previous studies focus on specific aspects such as investment effects or legal structures. Yet, there exists a notable deficiency in analyzing the subtleties of land ownership policies in both nations through a lens that integrates economic requirements, human rights, equity, and national sovereignty. This paper presents an interdisciplinary examination aimed at addressing gaps in the existing literature by analyzing the intersection of land policies in Indonesia and Thailand with various dimensions and their implications for both domestic citizens and foreign stakeholders.

Moreover, earlier studies often exhibit a singular disciplinary or geographical emphasis, whereas this research seeks to adopt a more comprehensive perspective. The analysis encompasses not only the economic ramifications of land liberalization but also delves into the societal, legal, and human rights dimensions — areas that seem to be insufficiently addressed in the current literature. This research enhances the understanding of the regulatory challenges and opportunities associated with foreign land ownership in the context of globalization, providing insights that hold significance on both regional and global scales.

The regulation of land ownership for foreigners varies significantly across countries, influenced by legal traditions, economic considerations, national sovereignty, and human rights perspectives. In Southeast Asia, Indonesia and Thailand have distinct policies regarding foreign land ownership, reflecting their unique socio-political and economic contexts. However, the underlying factors driving these policy differences and their broader implications remain a subject of discussion. This study seeks to address the following research questions:

RQ1: How do land ownership policies for foreigners differ between Indonesia and Thailand?

RQ2: What are the key factors that contribute to these policy differences?

RQ3: How can these differences be analyzed from the perspectives of equity, human rights, economic needs, and national sovereignty?

To answer these questions, this research aims to: analyze the differences in land ownership policies for foreigners between Indonesia and Thailand; identify the primary factors influencing these policy differences; and examine the policies through the lenses of equity, human rights, economic needs, and national sovereignty. By conducting this interdisciplinary analysis, the study provides a deeper understanding of the motivations behind these regulations and their potential socio-economic impacts. Ultimately, this research contributes to discussions on land governance, investment policies, and the balance between national interests and foreign involvement in land ownership.

The structure of this article consists of several main sections, organized to discuss topics related to law and corporate governance. Section 1 outlines the research problem and objectives, providing context on agrarian law and foreign land ownership in Indonesia. Section 2 explores the concept of land ownership, related disputes, and issues surrounding foreign ownership of land. Section 3 explains the research approach, including qualitative and quantitative data collection and analysis methods. Section 4 presents the research results and examines the differences in land rights and restrictions between Indonesia and Thailand. Section 5 discusses the main research findings. Section 6 summarizes the key findings and offers recommendations based on the analysis conducted.

2. LITERATURE REVIEW

The justification for absolute private ownership, originating from liberalism, is deeply embedded in enduring intellectual discourse. This ongoing debate has led to an implicit consensus that labour and land are inherently connected, thus granting those who cultivate the land the right to possess it. The individual who cultivates the land possesses ownership of it (Simarmata, 2021). Locke's perspective holds significant symbolic meaning in this context. In his initial thorough exploration of the relationship between private land ownership and common land via the framework of natural property rights, Locke did not reject the notion of common land coexisting with the possibility of private ownership. He systematically diminished common land to a state of *res nullius*, or potential ownership, in areas that were not utilized, thereby rendering it accessible for private governance and regulation based on specific moral criteria informed by the labour applied in agricultural practices (Murray, 2022). This concept is founded on utilizing shared resources, suggesting that the active combination of labour with natural resources is a clear justification for the transition of "common land" into private ownership (Moulaert et al., 2024).

Darin-Drabkin (2013) articulates that the notion of land ownership is intertwined with the social, economic, and political frameworks, as well as the developmental stage of a nation. Land ownership evolves in tandem with the shifting significance of land within the economic and social frameworks. This concept contrasts significantly with the era when individuals were nomadic, relying on hunting for sustenance before the advent of sedentary agriculture. The different agricultural systems

significantly impact the notion of land ownership. The concentration of population in urban areas, advancements in technology, the speed of industrialization, and the growing demand for urban land are significant factors that shape the understanding of land ownership. Nonetheless, the notion of ownership, intertwined with legal and political values, has evolved more slowly than socio-economic transformations.

The integration of land as a reserve asset into societal awareness led to the emergence of the land myth in the mid-1980s. The myth led to a speculative movement in the market that, paradoxically, contradicted it. This phenomenon occurred without attracting criticism, resulting in a significant increase in land prices, irrespective of the demand for land as a productive asset. The tax system differentiates between the “usefulness of land as an asset” and the “benefits of speculation” that arise from it. It is important to recognize that the latter is allowed, as it is underpinned and bolstered by the former. We should examine this situation through the landowner’s economic freedom lens. In Western Europe, stringent regulations govern land ownership, resulting in a notable restriction of freedom. The freedom associated with ownership is typically preserved; however, this principle does not extend to land ownership. According to urban planning laws, the standard practice is to deny the freedom to build (Yonosuke, 1998).

The matter of land ownership presents a complex and enduring challenge. The limited distribution of land ownership, coupled with a high number of family members, the challenges in transitioning from agricultural to non-agricultural practices, and the concentration of land in the hands of a select few complicate the implementation of government regulations in this area. The government aims to achieve income parity for farmers by utilizing financial and physical tools. The transfer of land ownership from individuals to government control diminishes personal freedom regarding land ownership and introduces additional complexities associated with the social issues that emerge from this arrangement. The government can decrease land ownership concentration by implementing progressive land taxes. Furthermore, restricting land ownership to a specific region is anticipated to create a more equitable distribution of land ownership (Ichsan & Nasution, 2021).

The issue of land ownership in Indonesia stems from conflicting legislation concerning land and forest rights, coupled with the government’s inability to acknowledge the territorial rights of indigenous populations. Limitations placed on customary rights regarding land use frequently prioritize corporate interests, particularly in sectors like forestry and oil palm, thereby intensifying disparities in access to natural resources. The presence of inaccurate maps and unclear procedures for registering community forests exacerbates the situation. This leads to conflicts regarding claims, disputes over the boundaries of customary territories, and heightened tensions with holders of Forest Concession Rights. To resolve these issues, engaging in continuous negotiations among indigenous communities, concession holders, and governments at multiple levels is essential to establish more defined land tenure mechanisms. Proposed actions encompass enhancing transparency in land use planning, consolidating

national land and forest maps, and removing village and customary land from state forest classification, as suggested by the Chair of the REDD+ Panel. The anticipated outcomes of these initiatives include decreasing conflict and establishing legal certainty for rural communities in the management and defence of their land (Angelsen et al., 2013).

Land rights disputes in Indonesia arise from a multitude of factors, encompassing legal aspects as well as the socio-economic circumstances of the community. The primary factor contributing to this issue is the reliance of a significant portion of the population on the agricultural sector, in which land serves as the principal asset that is greatly anticipated. Pressure on land is intensifying, particularly on Java, as rapid population growth occurs without a corresponding equitable distribution to other regions or the establishment of sufficient employment opportunities. Furthermore, ineffective government policies in the land sector have further exacerbated the situation. The comprehension of land laws and regulations remains challenging, particularly due to the lack of a definitive Ownership Rights Law and the significant presence of absentee land that has been neglected and underutilized. The situation reveals a conflict over land between the community and the government regarding rights applications, alongside competing interests tied to land allocation policies that affect both the public and business sectors. Land acquisition frequently involves inconsistencies regarding the definition of land boundaries, the procedures followed during acquisition, and the compensation amounts, which may diverge from established regulations or initial agreements (Suwito, 2023).

Indonesia has experienced significant impacts from globalization, evidenced by the increasing interest of foreign investors. It is important to note that certain restrictions exist regarding land ownership in Indonesia for foreigners. Specifically, Law No. 5 of 1960 concerning Basic Agrarian Principles (*Undang-Undang Pokok Agraria*, UUPA) and its associated regulations impose limitations on the ability of foreigners and foreign legal entities to own land and buildings. The concept of a foreigner is articulated in Article 1 of Law No. 24 of 2013, which amends Law No. 23 of 2006 regarding civil administration. According to this definition, a foreigner is identified as an individual who does not hold Indonesian citizenship. Comparably, Law No. 6 of 2011 regarding immigration defines a foreigner as an individual who does not hold Indonesian citizenship (Ardani, 2017).

3. RESEARCH METHODOLOGY

This study utilizes a mixed-method approach, combining qualitative and quantitative data to examine legal and economic texts thoroughly. Data were gathered from various sources, such as legal documents, policy papers, economic reports, and academic literature. The qualitative data comprised legal texts, court rulings, and government regulations, whereas the quantitative data encompassed statistical information about economic indicators, land ownership, and investment trends. The process commenced with data reduction, systematically filtering out irrelevant information to ensure a concentrated focus on the research objectives (Miles, 1979). The subsequent phase entailed the coding and categorizing of data

according to established themes, including legal frameworks, economic implications, and regulations regarding foreign land ownership, facilitating a systematic interpretation.

Comparative legal and economic study helps identify similarities, disparities, and policy reform opportunities in land ownership legislation across countries or legal systems. This study begins by classifying countries by the legal framework—common law, civil law, or customary law—receptivity to foreign property ownership, and economic development. The data includes constitutions, property laws, court rulings, and land reform policies, as well as economic data like economic growth, foreign direct investment (FDI), land price trends, and the real estate sector's economic impact. This study categorizes data by ownership rights, regulatory complexity, investment impact, and legal enforcement efficacy to uncover patterns of successful and unsuccessful policies. Case studies from many countries show how well-structured regulations encourage investment and preserve national interests. The results are then used to develop policy recommendations to promote legal harmonization in international trade agreements, regulatory reforms that balance economic openness with national sovereignty, and land governance transparency and efficiency to strengthen land ownership's legal and economic structures.

The findings were subsequently examined through the lens of pertinent legal and economic theories to yield more profound insights into the issues addressed. The study went beyond simply outlining the issues, providing a detailed analysis that included potential solutions and policy recommendations. Ultimately, conclusions were derived from the comprehensive examination to respond to the research inquiries and enhance the wider legal and economic governance discussion. This methodical approach guarantees a comprehensive grasp of the intricate issues related to land ownership and regulatory frameworks.

4. RESULTS

One of the fundamental differences between granting land rights in Thailand and Indonesia is that the Thai government allows foreigners to become land ownership rights holders. Based on Thailand's land regulations, Land Development Act, B.E. 2543 (2000), land rights are defined as land ownership, including its possession. This discussion will begin with an explanation of the classification of land rights in Thailand, which are divided into two, namely government land, consisting of land that is used publicly, abandoned land, land owned by government institutions, and government, and reserve land. On the other hand, there is private land owned by individuals or groups, one of which is freehold (ownership), and other types of land rights. These land rights can be granted with a freehold as a hereditary (indefinite), strongest, and fullest right to foreigners as stipulated in the revision of the Act promulgating the Land Code B.E. 2497 (1954) approved by the government on October 25, 2022.

This regulation revised Thailand's land rules, published in 1954 and 2008. It was stated that it prohibits foreigners from owning land with ownership rights status. The revision of this regulation is a response to the policy of prohibiting foreigners from obtaining land rights (Spinoni

et al., 2021). The term "foreigners" in Thai land law refers to non-Thai people and foreign legal entities registered in Thailand.

Concerning the ownership of land rights for foreign legal entities in Thailand, the government has set certain limits. The companies that cannot obtain land rights in Thailand are foreign companies whose more than 49% of the shares are owned by foreigners and specifically limited liability companies whose shareholders are more than 50% owned by foreigners; associations whose more than half of the members are not Thai citizens (foreigners); foundations whose purpose is for the benefit of foreigners.

For foreigners, Thailand allows them to have full ownership of land on the condition of investing with a value of 40 million Thai Baht. The area of land that can be owned by foreigners who meet this condition is 1 rai, or equivalent to 1,600 square meters, because the purpose of granting this right is for the residence of the foreigners. Land ownership for foreigners in Thailand must also meet several other conditions, namely: the type of business that will be chosen by the foreigners should provide benefits to the country; the investment period made by the foreigners is at least three years; the investment area must be within the administrative area of the Bangkok Metropolitan Government, Pattaya City or residential area under the Regional Spatial Plan.

In this case, the government continues to supervise the use of the land by foreign parties. This is because the land can only be used for residential purposes. If the land is not occupied accordingly, the government is authorized to revoke the ownership of the land.

Principally, the purpose of granting land ownership to foreigners is to increase investment in the country. Changes in land policy in Thailand cannot be separated from the political direction of development law in the country, which prioritizes the investment aspect. In October 2023, the Government issued a strategy to increase the investment consisting of seven pillars, including advancing Thailand as a center for international business, trade, and investment. To increase economic growth, the Thai government is trying to create comfortable conditions for investors, including by making policy changes for investors in the land sector. This effort is considered an important action to improve the economic growth of the country.

Currently, the total foreign investment in Thailand reaches 275.6 billion baht or USD 7.18 billion. The main investors who carry out its economic activities in Thailand are China with an investment of 45 billion Baht or equivalent to USD 1.17 billion, Taiwan with an investment value of 39.3 billion Baht or equivalent to USD 1.02 billion, Japan with 37.6 billion Baht or equivalent to USD 980 million, the United States with an investment of 34.3 billion Baht or equivalent to USD 890 million and Hong Kong with an investment of 26.3 billion dollars or equivalent to USD 690 million.

The increase in foreign investment is, indeed, Thailand's focus because currently, outward direct investment in Thailand has beaten investments made by domestic companies. This high investment can support economic growth in Thailand and also increase the absorption of labor in the country. The Organization for Economic Co-operation and Development (OECD) also proposes that Thailand

take initiative measures to increase investment in Thailand, including in the land sector.

The policy to provide full ownership for foreigners also aims to increase the property business in Thailand. Moreover, there had been a continuous decline or slowdown of the property business in Thailand, which continued to decline in 2021. (Pichler et al., 2021) In the fourth quarter of 2020, the Thailand Property Market Index decreased from 197 to 190 in the first quarter of 2021, this figure decreased again in the second quarter of 2021 to 183, and continued to decrease in the third quarter of the same year to 178. To overcome these, changes in property policy in Thailand are very crucial to improving the performance of the property industry, including providing full ownership for foreigners in Thailand.

Globalization is related to the mobilization of humans, which is getting faster, easier, and blurring territorial boundaries. In this case, there is a migration or movement of foreign residents from their country to settle in Thailand. In one of the International Labour Organization (ILO) documents, it is stated that in 2019, the number of official migrant workers in Thailand reached 2,877,114 people. With such a number, migrant

workers in Thailand contribute 4.3-6.6% of the country's gross domestic product (GDP) (ILO, 2019). The target of this policy is wealthy foreigners, retirees, foreigners who want to work in Thailand, as well as those who have the skills needed and beneficial to Thailand. Changes in land policy in Thailand that emphasize investment through the ease of land ownership for foreigners can be linked to the influence of capitalism and globalization. Changes in land ownership patterns in Thailand to increase economic needs have also occurred in Poland. This is where the influence of capitalism is related to land ownership. Poland gives equal rights to foreigners to own land. This policy is not only caused by the country's economic needs but also influenced by the establishment of Poland as part of the European Union (Banski, 2011).

Efforts to provide ease of land ownership for foreigners to increase investment are also carried out by Indonesia. This is marked by the arrangement of regulations oriented towards increasing investment, one step of which is to expand the scope of land acquisition by foreigners. In the previous regulation, the Basic Agrarian Law limited the ownership of land for foreigners to only the right to use, as depicted in Table 1.

Table 1. Ownership rights under Indonesian Agrarian Law (UUPA)

Ownership rights	The right to cultivate	The right to build	The right to use
- Indonesian citizens; - Legal entities established by the government.	- Indonesian citizens; - Legal entities established under Indonesian law and domiciled in Indonesia.	- Indonesian citizens; - Legal entities established under Indonesian law and domiciled in Indonesia.	- Indonesian citizens; - Foreigners domiciled in Indonesia; - Legal entities established under Indonesian law; - Foreign legal entities that have representatives in Indonesia.

Source: Authors' elaboration.

Table 1 shows that in the Basic Regulations on Agrarian Principles or *Undang-Undang Pokok Agraria* (UUPA), foreign citizens and foreign legal entities that have a representative in Indonesia can only have the right to use and cannot have ownership rights, the right to cultivate, the right to build, and the right to use. This has implications for the ownership of flats for foreigners because they can only own flats with land titles of right to use. This is because the concept of owning flats consists of shared space, shared objects, and shared land. This means that the joint ownership of land by foreigners is only land with the right to use. Changes occurred when the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2021 concerning Procedures for the Determination of Management Rights and Land Rights was issued. This matter is regulated in one special chapter, namely Chapter VIII, which consists of Articles 185-189. In Article 185 letter B, it is stipulated that foreigners can have flats that can be built on an area of land.

The efforts to provide ease of land ownership for foreigners to increase investment are also carried out by Indonesia. This is marked by the creation of regulations oriented towards increasing investment one step of which is to expand the scope of land acquisition by foreigners. In the previous regulation, the UUPA limited the ownership of land for foreigners to only the right of use as stipulated in Table 1 the right to use or the right to use buildings on state-owned land; the right to use or the right to use the building on the land with the right to manage; the right to use or the right to use the building on the owner's land.

Through this provision, foreigners can own flats on land with the status of rights to build and rights to use. This is different from the previous regulation, which stated that foreigners could only have the right to use.

The above description shows that the two countries relaxed their land policies to support land ownership for foreigners. However, there is a fundamental difference between the two, namely that Thailand provides the possibility of land ownership rights for foreigners, while the Indonesian government only allows foreigners to own flats on land with building rights. There are at least several factors that cause this difference, namely differences in land philosophy, differences in legal history, and differences in the level of dependence on foreign investment.

Considering the difference in land law philosophy, Indonesia's land law is based on customary law, which is the original law of the Indonesian nation and is also a reflection of the legal culture of the Indonesian people. The prohibition of giving ownership rights to foreigners exists in customary law communities, with only customary law communities having a full legal relationship with the land. If foreigners want to use the land in the area for a certain period, the person concerned is obliged to pay a certain amount of remuneration, and if the use has been completed, the land will return to the customary law community concerned (Suartika, 2007).

In customary law, the strength of a person's relationship with the land is determined by at least two things, namely the person's position in society and the strength of the relationship between

the land and the person. In terms of position, a person who wants to own land must be a person who is a member of the customary law community. Ardiwilaga (1962) said that customary rights are the right of the legal community to freely use the lands that are still bushes within the territory for the benefit of the legal community itself and its members, or the benefit of outsiders (immigrants, foreigners) but with their permission and always with the payment of recognition. In addition, the legal community still strictly controls whether or not it has been cultivated, as well as the lands that have been cultivated by people located in its territory.

The concept of land rights according to customary law is then the basis of the principle of nationality. The adoption of the concept of customary land law for the national land law has resulted in the integration of the concepts and values contained in customary rights into national law, including the principle of nationality. The application of the principle of nationality in the UUPA, especially in land ownership, has the consequence of the difference in treatment between Indonesian citizens and foreigners. In international civil law, the difference in treatment is natural because there is an international agreement that a country is allowed to prohibit foreigners from acquiring permanent objects in its territory. In public international law, the Republic of Indonesia, as an independent and sovereign country, has the right to make provisions that limit the possibility of foreigners controlling land with rights. Thus, the treatment is reasonable, especially related to the position of the land.

Concerning the principle of nationality, the authors are interested in referring to Suparjo's (2014) view in his dissertation, which stated that the core of independence is the existence of a free and real relationship between Indonesian people and their land to meet the needs of Indonesia. In other words, the proclamation of independence is an expression of human relations with the ideal land that is free from pressure, violence, and threats from other parties. In this case, the principle of nationality is an expression of the independence of the Indonesian people over their land.

Moreover, the principle of nationality also affects the determination of the subject of rights and the types of rights they have. One of the articles in the UUPA, which is an elaboration of the principle of nationality, is Article 9 of the UUPA, which provides a limitation that only Indonesian citizens can have an absolute relationship with the land. In other words, only Indonesian citizens can hold ownership rights as hereditary, strongest, and fullest rights, so that foreigners cannot become property rights holders.

The authors strongly agree with the views of Geschk and Holzhausen (2017), who stated that the basis of land ownership is a social contract in the society concerned. In this case, ownership rights, which are hereditary, strongest, and fullest rights, should be given to the people of the country concerned who are bound by the social contract (Grecksch & Holzhausen, 2017). One of the principles of the UUPA is the principle of nationality as regulated in several articles of the UUPA. According to Harsono (1997), the main basis of this principle is Article 1, paragraph (1) and paragraph (2) of the UUPA. Article 1 of the law emphasizes that there is a close relationship between the Indonesian nation

and the land, water, space, and natural resources contained in it, and places these resources as national wealth.

The above description shows that the ownership of land that can only be given to native Indonesians and certain legal entities is based on customary law, which is the basis of Indonesian national land law. This is different from Thailand, which has developed its land law based on capitalism. Submission to capitalistic European concepts is not new for Thailand because this country is not formally colonized but voluntarily submits itself to Western patterns of thought and views, including in the field of land management.

In early 1861, the concept of land ownership was first introduced by King Mokut, the leader of Thailand. This concept was continued by King Chulalongkorn by carrying out modern land administration (Huque & Jongruck, 2020). In 1930, land registration activities began to legalize individual ownership, and many laws and regulations related to land (Sakprachawut & Damien, 2016). These practices were even more massive when there was a program initiated by the World Bank for the privatization and formalization of land in 1984 (Constable & Kuasirikun, 2007). Finally, in 2022, this business succeeded by liberalizing trade, including providing full ownership for foreigners to increase investment.

The policy carried out by Thailand to provide land with ownership rights to foreigners with certain conditions is different from Indonesia, which has prohibited foreigners from owning land rights both in colonial land law and *swapraja*¹ (kingdom) land law.

The prohibition of giving rights to foreigners has existed since the Netherlands' colonial period, including the Vereenigde Oost Indische Compagnie (VOC) in 1620, which made a regulation that prohibits the transfer of rights of land by indigenous people to foreigners. The same decision was made by the Netherlands Colonial government, which issued a similar prohibition through the Grond Vervreemding Verbod Stbl. 1875-179.

The prohibition can not only be traced from the policy of the colonial government but also the policy of the kingdoms that existed in Indonesia before independence, including the Islamic Mataram Kingdom (Yogyakarta Sultanate) which also known the same rules as the prohibition of giving land rights to foreigners regulated in the Rijksblad of the Yogyakarta Sultanate and Paku Alaman Year 1925 No. 23 and No. 25. This can be found in Hiroyoshi Kano's investigation in his research on land rights in Java and Madura. This study found that village communities in Java and Madura were prohibited from selling their land to people outside the village.

The prohibition of giving or transferring land rights to foreigners is also contained in Article 26 paragraph (2) of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles which expressly stipulates that land ownership shall not be transferred to foreigners through sales and purchases, exchanges, gift, bequest by will and acts that directly or indirectly transfer the ownership rights. The descriptions of actions detailed above are forms of acts that directly transfer ownership rights.

¹ *Swapraja* refers to the territories of indigenous kingdoms in Indonesia that were governed by local kings under the authority of the Dutch East Indies. It was a form of regional government recognized by the Dutch colonial government.

The indirect actions are using the guise of transferring ownership rights to foreigners.

In this context, the regulation related to the prohibition of land rights granting and transfers in Indonesia is the Regulation of the Minister of Agrarian Affairs No.14 of 1961 concerning the Request and Granting of Permits for The Transfer of Land Rights (PMA No. 14/1961) which requires all land transfer of any land to apply for a permit. This was then affirmed in the Decree of the Minister of Agrarian Affairs No. Sk.3/Ka/1962, which states that the application for permission to transfer rights must be rejected if the transfer violates or contradicts the Law. In this case, the transfer of land to a foreigner violates Article 26, paragraph (2) of the Agrarian Law.

Entering the New Order Era, the government made a policy through Government Regulation No. 17 of 1992 concerning Requirements for Share Ownership in Foreign Investment Companies, which allows foreign companies to fully control or own 100% of shares in a company. In the land sector, the company can become the holder of the right to cultivate or the right to build either directly in the name of the foreign-invested company or on behalf of its joint business. The freedom of foreign companies during the New Order Era was due to the very strong influence of capitalism at that time. This was also marked by a change in development orientation from equity in the Old Order Era to a growth-oriented approach that emphasizes industrial development. The orientation of the UUPA has indeed shifted from the Old Order Era from a populist-communistic spirit to a liberal and individualist spirit.

During this period, there was also a change in the permit for the transfer of land rights. During the Old Order Era, there was an obligation to report every activity of land transfer to prevent the transfer of land ownership to foreigners. The report is addressed to the Minister of Agrarian Affairs. However, during the New Order Era, not all forms of land transfer were obliged to be reported, and only some forms were mandatory as stipulated in the Circular Letter of the Director General of Agrarian Affairs of the Ministry of Home Affairs No. BA.11/8/70 dated November 7, 1970. The transfers of land that still require a permit are agricultural land ownership; land ownership for buildings and the right to build if the family already owns five or more areas of land; the right to build on state-owned land if it is carried out to a legal entity; land with the right to use status; the right to use of the state-owned land if it is done to a foreigner or a legal entity.

The restriction on the implementation of permits for transferring land rights to the five fields makes it easier to transfer land rights to foreigners because it weakens the permit in the land sector and weakens land supervision carried out by the state. This is because the permit is a supervisory instrument. This description shows that foreigners have not been able to own land in Indonesia, so Indonesian citizens cannot transfer land to foreign citizens, even though there is a weakness in the supervision of this activity during the New Order Era due to the influence of capitalist economic orientation.

Indonesia's land law, which is open to foreign investment, is different from Thailand's, which prohibits foreign investment in the agricultural sector. In 2016, the Government of Thailand issued

the Agricultural Land Lease B.E. 2559, which prohibits foreign people and companies from renting land for agricultural purposes. This rule has been effective since April 30, 2016. In this case, Thailand does not allow foreign companies to invest in agriculture. In 2016, the Government of Thailand issued the Agricultural Land Lease B.E. 2559, which prohibits foreign people and companies from renting land for agricultural purposes. This rule was effective on April 30, 2016. Interestingly, this law further narrows the interpretation of the definition of foreign people and companies. The definition of a foreign company in Thailand's land law is a company whose capital is at least 49% or more owned by foreigners.

This is different from the provisions of land law in Indonesia, which do not limit the scope of foreign investment, including in the agricultural sector. In the UUPA, it is stated that one of the rights to land in Indonesia is the right to cultivate, which can be given to business entities, including foreign business entities. In this case, the largest foreign investment in Indonesia is in the plantation sector, which occupies the top position, even four times higher than foreign investment in the horticulture sector. There is also no limit on share ownership for foreign companies that want to invest in Indonesia.

The authors believe that the restrictions imposed by Thailand on foreigners to invest in agriculture are important for Indonesia to emulate to prevent the dominance of foreign company ownership in agriculture, which can harm local farmers. It is also important to resolve the land ownership gap happening in Indonesia today. The dominance of agricultural land ownership by foreigners is currently happening in the Awash Valley region of Ethiopia, where 75% of the land is owned by large-scale companies, mainly foreign investors. This not only creates a gap in land ownership but also triggers agrarian conflicts (Bekele et al., 2022).

5. DISCUSSION

From a historical perspective, the prohibition of foreigners to own land has existed since the XIII century AD in the United Kingdom. At that time, there was a prerogative from the kingdom to confiscate the lands of foreigners. This is important to protect the sovereignty of the kingdom's territory. In addition, William Blackstone stated that the land was not given to the foreign parties in the form of ownership rights because in the past land control was carried out through the relationship between the lord and tenant (the landlord as a representative of the king) and the tenant (Byer, 2023). This land would be leased only to individuals who had allegiance to lords and kings (Bartle, 2010). Because foreigners did not have complete loyalty to the king and lord or landlord, control or ownership of the land could not be given to that person (Teresa, 2022).

The authors are interested in discussing this topic because it is understood that ownership right is not an absolute right, so it can be set aside by the state (Grecksch & Holzhausen, 2017). The authors think that the status of land rights is not an absolute right; of course, it provides a chance for the state to set aside it, especially since land ownership is closely related to the aspects of sovereignty and welfare of the country. Moreover, in Article 2, paragraph (3) of the 1966 International Convention

on Economic, Social and Cultural Rights, it is stated that developing countries such as Indonesia can override the rights of foreigners to consider their national economic needs. Moreover, there is a principle of state sovereignty over natural resources. This is also in line with the principle of the right to control the state in the 1945 Constitution of the Republic of Indonesia (Maniruzzaman, 1998).

Baldwin (1922) agreed that the prohibition of land ownership rights for foreigners can be enforced when there is sufficient justification. The same opinion was also expressed by Qin (2020). The article by Qin (2020) is interesting because it was written based on three different points of view: economy, security, and human rights. Based on his analysis, it was stated that the state should provide space for foreigners to own land, but it does not provide property rights as the strongest, hereditary, and fullest land. This is done to maintain the needs of the state, especially in terms of security and sovereignty, and on the other hand, to provide opportunities for the investors. The state, based on the Westphalia concept, has sovereignty over its territory, including land as one of the natural resources. This is also emphasized in United Nations Resolution No. 1803 (XVII) relating to the State Sovereignty Over Natural Resources. In this resolution, it is stated that the state has sovereignty over its natural resources, including land and resources, which must be used for the benefit of national development and the welfare of its people.

Based on this explanation, there is an authority of the state to prioritize its citizens in the use of natural resources for the good of the community concerned (Emel et al., 2011). Another justification for restricting land ownership rights to foreigners is human rights reasons because the state is obliged to prioritize the fulfillment of the human rights of its citizens, namely the welfare of its people, compared to the needs of foreigners (Qin, 2020).

This principle of equity can be traced first from the concept put forward by Aristotle, Plato, Wilson, and Dwight Waldo. This principle emphasizes justice in the distribution of resources in society (Wooldridge & Gooden, 2009). This principle of equity is associated with John Rawls, who introduced two main principles of justice, namely: 1) the principle that all individuals have the same right to access various resources; and 2) the principle that the least disadvantaged parties must be given priority for the resources (the different principle) (Kogelmann, 2019).

Under these conditions, restrictions on foreign people and companies owning land can be justified to protect the rights of local communities or citizens who lack access to land, as happened in Indonesia and even today in America. Under such conditions, people who do not own land must be protected from foreign investment that can invade and take over land ownership rights from the citizens of the country. By considering this view, the restriction on foreign entities to control agricultural land carried out by Thailand can also be justified. This is because agriculture is related to land ownership for many Thai farming communities whose rights need to be protected. Moreover, the peasant community is vulnerable and disadvantaged.

In the context of land ownership, this is also related to the control of resources in Indonesia. In this case, not giving away land to foreigners is very important to ensure that the rights of local communities are protected (Yang & Loopmans, 2023).

One important phenomenon is the invasion carried out by plantation companies that own foreign land on plantations owned by traditional farmers in South Africa, especially the Cape Floristic Region. The number of plantation areas covered 70% of the total plantation area during its 10 years of operation. This is also troublesome for the government and certainly harms people whose land is getting narrower due to limited access to land and difficult access to water (van Rensburg et al., 2017).

The land ownership restrictions policy carried out by Indonesia is in line with the value of equity and is important to protect public access to land. This is because land is a resource whose main purpose of use is to maximize the prosperity of the people. The difference in treatment regarding land ownership between Indonesian citizens and foreigners does not violate the value of equity and also aligns with the International Convention on Economic, Social, and Cultural Rights.

6. CONCLUSION

Current land ownership arrangements for foreigners in Indonesia and Thailand are structured to promote investment. In Thailand, foreigners can obtain land ownership rights contingent upon making a specified investment. This difference arises from multiple factors, including variations in land philosophy, legal history, and the extent of reliance on foreign investment. Indonesia imposes limitations on land ownership for foreigners, as its land legislation is based on the principle of nationality, which is deeply embedded in customary law and historical land policies established during the colonial era. Conversely, Thailand has traditionally structured its land policies around a more liberal and capitalistic framework, largely influenced by its significant reliance on foreign investment.

The restrictions in Indonesia align with the value of justice as defined by the principle of equity, which focuses on safeguarding land ownership for marginalized groups — specifically Indonesian citizens without land — while concurrently upholding national sovereignty. This is consistent with the International Convention on Economic, Social, and Cultural Rights and United Nations Resolution No. 1803 (XVII) regarding State Sovereignty Over Natural Resources, which permits developing countries to restrict land ownership by foreign nationals.

The results indicate that variations in legal frameworks and economic reliance influence land policies concerning foreign ownership. Indonesia's approach to restricting foreign ownership demonstrates a dedication to social justice and sovereignty, whereas Thailand's strategy of openness is aimed at attracting investment. The impact of these policies on foreign direct investment flows and long-term economic growth is significant.

This study primarily examines legal frameworks and historical influences; however, it lacks a thorough evaluation of the economic implications of these regulations on land prices, real estate markets, and local communities. Furthermore, discrepancies in enforcement and possible loopholes in both nations necessitate a more thorough examination.

One limitation of this study is its lack of a thorough economic evaluation. While the research

focuses on legal frameworks and historical influences, it does not provide an in-depth analysis of the economic implications of these regulations, such as their impact on land prices, real estate markets, and local communities. This limits the understanding of the broader economic effects of foreign land ownership policies.

Additional investigation may examine the socio-economic effects of foreign land ownership policies on local communities, with

a focus on both urban and rural settings. Conducting comparative studies that include more Association of Southeast Asian Nations (ASEAN) countries may yield deeper insights into effective strategies for harmonizing investment facilitation with national priorities. Furthermore, a thorough examination of the impact of these policies on foreign investment inflows and local economic development would prove advantageous.

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