

## **PROPERTY OWNERSHIP BY EXPATRIATE AFTER GOVERNMENT REGULATION NUMBER 103 YEAR 2015 WAS PUBLISHED**

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On December 28, 2015, Ministry of Law and Human Rights of Republic of Indonesia published a new regulation regarding property ownership by Expatriate in Indonesia. The regulation is Government Regulation Number 103 Year 2015 regarding Ownership of House or Residence by Expatriate Residing in Indonesia (~~%Government Reg. No. 103/2015+~~), which replaces the Government Regulation Number 41 Year 1996 regarding Ownership of House or Residence by Expatriate Residing in Indonesia (~~%Government Reg. No. 41/1996+~~)

As a matter of fact, property ownership by Expatriate in Indonesia has been regulated in Chapter IV, Article 41 . 43, Indonesian Law Number 5 year 1960 regarding Agrarian Principle Rules and on Government Reg. No. 41/1996, therefore the property ownership by Expatriate is not something new in Indonesia. But Government Reg. No. 10/2015 regulating more detail about the terms and conditions of property ownership by Expatriate, including the property heritage and legal consequences of such property in mix marriage (different nationality). Here will be explained about the legal way for Expatriate to own property in Indonesia with Right to Use (Hak Pakai), together with its regulation, legal consequences and legal Title of such property owned by Expatriate.

### A. How Could A Expatriate Owned Property in Indonesia?

Expatriate who desires to have property in Indonesia must be qualified as follows:

1. Residing in Indonesia;
2. Their existence should provide benefit, conducts the business, work, or investing in Indonesia;
3. Having a legal residential permit (diplomatic residential permit, working permit, visit permit, temporary residential permit, or permanent residential permit)

Expatriate may have property in Indonesia with Right to Use Title (Hak Pakai), not freehold title (Hak Milik). Freehold Title is the highest rights of property ownership according to Indonesian Regulation because it has no time limit, but only can be obtained by Indonesian Citizens. In which it is so different with Right to Use, because Right to Use has time limit.

Properties that can be owned by Expatriate are:

1. A house above the land with Right to Use Title

The time limit is 30 years, can be extended up to 20 years and renewed up to 30 years. So the total time limit for the ownership of a house above the land with Right to Use Title is 80 years. And/or;

2. Apartment Units above the land with Right to Use Title.

In other words, in case Expatriate would like to buy property in Indonesia, make sure that the land Title of such property is Right to Use and those Expatriate is residing in Indonesia, conduct business / investing in Indonesia and has obtain a legal residential permit. In case the land is Freehold Title, then Expatriate may lower the land Title into Right to Use by submit a proposal to Head of Land Office.

B. How is The Legal Title of Such Property In Case Of Mix Marriage (Different Nationality)?

There is a special right for Indonesian citizens that married to Expatriate and would like to buy property in Indonesia after the publishing of Government Reg. No. 103/2015. If the Expatriate can only have property in Indonesia with Right to Use Title, then Indonesian citizens who married to Expatriate could have property in Indonesia with Freehold Title. But to have such Freehold Title properties, such mix marriage couple (different nationality) must have wealth separation agreement with Notary deed.

On the other words, as long as they (mix marriage couple) have wealth separation agreement, then it is legal for Indonesian citizen to buy the land with Freehold Title. If the Indonesian Citizen buy the land with Right to Use Title, then the Indonesian Citizen has legal rights to improve the land title from Right to Use to Freehold Title. The advantage of having Freehold Title land is there is no time limit for its ownership.

C. How is The Legal Title of Expatriate's Property in Indonesia In Case The Expatriate is Passing Away?

For those Expatriate who already bought house or apartment in Indonesia with Right to Use title, in case they are passing away, such Expatriate has legal right to bequeath their property both to Indonesian citizen or Expatriate. In case the heirs are Expatriate, then these heirs must hold legal residential permit in Indonesia and such property will remain as Right to Use title. If the heirs are Indonesian citizen, then these heirs has legal rights to improve the title of property (heritage) from Right to Use into Freehold Title.

But if the Expatriate heirs are no longer residing in Indonesia, then within one year the Expatriate heirs must release or divert such heritage property (for example: sell the property) to another legal subject that fulfill the requirements according to Indonesian regulation. If more than one year these Expatriate heirs who no longer residing in Indonesia, has not release or divert such heritage property, then such heritage property will be auctioned and the result of such auction will be given to Expatriate heirs.

According to the legal description above, it is clearly explained that Government Reg No. 103 year 2015 ensure the legal rights of Expatriate to own a property in Indonesia, with such requirement according to Indonesian law as stated above. The legal status of such rights of property has been guaranteed by Indonesian Government, since the Expatriate buy such properties until they are passing away and heritage such property to their heirs.

