

## Client Alert



June 2016

### Update on Regulation Regarding Foreigners Owning Property

#### Recent Development

In late March 2016, the State Ministry of Agrarian Affairs and Spatial Planning/Head of National Land Agency issued Regulation No. 13 of 2016 on Procedure of Granting and Releasing or Transferring Land Rights over Residential Houses by Foreign Nationals in Indonesia ("Regulation 13"). Regulation 13 sets out more detailed provisions than those set out under a higher regulation, i.e. Government Regulation Number 103 of 2015 on Ownership of Residence or Tenancy Houses by Foreigners Domiciled in Indonesia ("Regulation 103") (please see our prior [client alert issued in January 2016](#)). Regulation 13 focuses on foreign nationals purchasing and transferring residential houses or apartment units and the granting of *hak tanggungan* (encumber as security) over houses or apartments owned by foreign nationals. The provisions of Regulation 13 generally affirm or clarify the provisions of Regulation 103.

#### What the Regulation Says

Regulation 13 is the first implementing regulation of Regulation 103. We believe there will be other implementing regulations of Regulation 103.

#### *Key provisions of Regulation 13*

1. A foreign national that has obtained a stay permit in Indonesia can only purchase a house or an apartment unit directly from a developer or a land owner, and the house or apartment unit purchased must be in brand new condition - a purchase from a secondary sale is not permitted. This confirms Article 5 of Regulation 103 which suggests that foreign nationals cannot purchase in a secondary sale and cannot sell the property to another foreign national. The implementation of this requirement may raise various interpretations as Article 5 of Regulation 13 states that foreign nationals may sell their property to other parties without specifying that they will only be able to sell their property to Indonesian citizens or Indonesian entities.

2. Regulation 13 stipulates that houses or apartments purchased by foreign nationals will be subject to the following minimum price.

a. House

No	Locations	≥ Price (in Rupiah)
1.	Jakarta	10 billion
2.	Banten	5 billion
3.	West Java	5 billion
4.	Central Java	3 billion
5.	Yogyakarta	3 billion
6.	East Java	5 billion
7.	Bali	3 billion
8.	West Nusa Tenggara	2 billion
9.	North Sumatra	2 billion
10.	East Kalimantan	2 billion
11.	South Sulawesi	2 billion
12.	Other Locations	1 billion

b. Apartment

No	Locations	≥ Price (in Rupiah)
1.	Jakarta	5 billion
2.	Banten	1 billion
3.	West Java	1 billion
4.	Central Java	1 billion
5.	Yogyakarta	1 billion
6.	East Java	1.5 billion
7.	Bali	2 billion
8.	West Nusa Tenggara	1 billion
9.	North Sumatra	1 billion
10.	East Kalimantan	1 billion
11.	South Sulawesi	1 billion
12.	Other Locations	750 million

Regulation 13 does not provide any explanation on how to determine the price or provide any minimum size of the house or apartment. Further, Regulation 13 is also silent on whether a foreign national may own more than 1 house or apartment.

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3. Houses and apartment units under Right to Use (in Indonesian *Hak Pakai*) purchased by foreign nationals can be encumbered with *hak tanggungan*. If the underlying right of a house or an apartment is Right to Use (in Indonesian *Hak Pakai*) over land under freehold (in Indonesian *Hak Milik*) or Right to Manage (in Indonesian *Hak Pengelolaan*), the encumbrance must be approved by the holder of *Hak Milik* or *Hak Pengelolaan*.

Regulation 13 does not further elaborate the procedures for encumbering the property owned by foreign nationals with a *hak tanggungan*. Therefore, the procedures to encumber the property owned by foreign nationals with a *hak tanggungan* should follow the same *hak tanggungan* requirements for properties owned by Indonesian nationals and Indonesian entities.

## Conclusion

- Regulation 13, as the first implementing regulation of Regulation 103 provides clarity on several provisions of Regulation 103 that were unclear, e.g.:
  - (i) The house or apartment unit to be purchased by foreign nationals must be in a new condition - a purchase from secondary sale is not permitted.
  - (ii) The house or apartment unit to be purchased by foreign nationals will be subject to the minimum price requirement, depending on the location of the property.
  - (iii) The house or apartment purchased by foreign nationals can be encumbered as security in the form of *hak tanggungan*.

It still remains to be seen how developers and potential foreign buyers will respond to the requirements for foreign nationals to purchase property in Indonesia. For the foreign buyers, the main concern may still be about the pool of persons in the resale market if secondary sales can only be to Indonesians.