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Apartment Units for Foreigner After the Issuance of the Omnibus Law in Indonesia

Abstract:

8 This research is normative juridical research that uses a statutory approach. The government has issued its latest policy, namely, law number 11, the year 2020, concerning omnibus law, which regulates property rights to foreigner regarding apartment units. Based on this regulation, foreigner can have ownership rights over the apartment units. However, it resulting in problems because there is a nationality principle regulated in Indonesian Land Law, which prohibits foreigner having ownership rights of land. In Minister of agricultural regulation, regulated that foreigner can only own apartment units based on usage rights. The result of this study, a foreigner can have an apartment through the transfer of ownership such as buying and selling, grants, auctions, and so on, but it is only a right to use, not an ownership right. Foreigner who wish to own an apartment unit must meet the requirements and restrictions in order to maintain and prioritize the interests of Indonesian citizens.

Keywords: Apartment, Foreigner, Omnibus Law.

INTRODUCTION

The increasing population in urban areas has consequences for the government to provide decent and healthy housing or shelter. One alternative to utilizing a small apartment can be a solution for business people, as an alternative to urban renovation for slum areas.¹

In line with the development of the national economy, the number of apartment holders is increasing. This is one of the characteristics of improving and expanding the national economy. The number of flats in a big city is one of the great demand for housing or housing. The price is relatively affordable and close to the highway; this is very suitable for community activities that are so dense. This also eliminates society's perception that apartments are owned by middle and upper-class people and flats for low-income people.²

According to Law Number 2 of 2011 concerning Flats ("Apartment Law"), a flat is a multi-story building built in an environment divided into

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¹ Hartanto, A. (2013). Kepemilikan Hak Milik Atas Satuan Rumah Susun. *Journal Rechten*, 2(1), p. 8-10.

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² M.Shaifiyuddi, Dkk, *Perolehan Sertifikat Hak Milik Atas Saturan Rumah Susun (Studi di Star Apartemen)*, Diponegoro Law Jou2rnal, Volume 5, Nomor 3, tahun 2016, p. 3.

functional ⁴ structured sections, both in horizontal and vertical directions. It is a unit, and each unit can be owned and used separately, especially for a dwelling place equipped with standard parts, everyday objects, and common land. The apartment unit's primary purpose is to use the main function as a residential place and connected to a public road.³

Regarding ownership of flat units, the known form of ownership is the Certificate of Flats Ownership. It is a form of ownership granted to the right holder of the Flats. The state of ownership rights of flats must be distinguished from ownership rights to houses and land in general. According to Article 46 of the Flat Law, ownership rights to apartment units are separate individual rights to flat units with joint rights over ordinary shares, everyday objects, and common land. The definitions of several terms referred to in Article 46 of the Flat Law, namely, Collective land is a plot of land title or lease land for buildings used based on collective rights. separately on which an apartment stands and the boundaries are determined in the building construction permit requirements. (Article 1 point 4 of the Flat Law).

A joint part is part of an apartment owned separately for shared use in a unitary function with apartment units. (see Article 1 point 5 of the Flat Law). The term "common part" means, among others, foundations, columns, beams, walls, floors, roofs, gutters, stairs, elevators, hallways, channels, pipes, electricity, gas, and telecommunications networks (Elucidation of Article 25 paragraph (1) Flat Law). Everyday objects are not part of a flat but part that is not separately owned for sharing. (see Article 1 point 6 of the Flat Law). What is meant by "common objects," among others, are meeting rooms, plants, gardening buildings, social facilities buildings, places of worship, playgrounds, and parking lots that are separate or integrated into the structure of the apartment building (Elucidation of Article 25 paragraph (1) Flat Law).

In the national land law known as the principle of nationality, which is regulated in the Basic Agrarian Law (UUPA), ¹⁷ foreign citizens ("WNA") and foreign legal entities are not allowed to have certain land rights as regulated in Article 9 paragraph (1) of the UUPA, especially in requests. Ownership of land and Building Use Rights. Land rights that foreigners may own are Hak Pakai. The UUPA regulations do not allow foreigners to have rights to land except use rights and/or lease rights for buildings. Due to the Civil Code's influence (BW), which always attaches houses to land

³ Journal, D. L. A. W., Wafi, M. S., Suharto, R., & B. S. M. (2016). Diponegoro law journal, p.5, 1-13.

rights, foreigners can only own homes above use rights and lease rights for buildings. Regarding ownership of land rights by foreigners, it is related to the principles adhered to by Indonesia, namely what is known as the principle of prohibition of alienation of land. The principle of prohibiting alienation of land is prohibiting land ownership with rights other than use rights to be owned by foreigners.

In the Law on Flats, the subject of ownership of flat units can be seen in Article 1, number 16 and number 17, which states that everyone is an individual or legal entity. Legal entities are legal entities established by Indonesian citizens whose activities are in housing and settlement area management. This is different from the issuance of Law Number 11 of 2020 concerning Job Creation (Job Creation Law), Article 144 paragraph (1) stipulates that ownership of apartment units can be given to:

- a. Indonesian citizens;
- b. Indonesian legal entities;
- c. foreign citizens who have a license ⁵ in accordance with the provisions of laws and regulations;
- d. foreign legal entities that have representatives in Indonesia; or
- e. ³⁰ representatives of foreign countries and international institutions that are located or have representatives in Indonesia.

These rules give rise to legal contradiction on the basis of. So it is necessary to have arrangements regarding the requirements for ownership of the cash flow given to these five groups. In the Job Creation Law or what is commonly called the Omnibus Law, there are no rules that regulate what land rights a foreigner can have.

The first comparison research results in land rights that can be owned by foreigners, namely use rights and lease rights. Land objects that can be owned by foreigners, use rights must stand on State Land or Management Rights. The occurrence of Usage Rights on State Land is due to a decision to grant rights by the Minister or an official appointed based on an application, while the occurrence of Use Rights over Management Rights is followed by a decision to grant rights by the Minister or an appointed official based on the proposal of the Management Right holder. The definition of lease rights is a right that gives an authority to use land. This research produces ideas, namely foreigners can have a building for a house, which can be in the form of flat units built on land use rights above state land or on use rights above management rights.⁴

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⁴ Vita Natalia Tambing, I Gusti Ayu Putri Kartika. (2016). Status Kepemilikan Hak Atas Tanah Dan Bangunan Oleh Warga Negara Asing Yang Berkedudukan Di Indonesia

Based on the background description stated above, the author is interested in studying the problem comprehensively. So that the author can also deepen and understand the topic of the problem with the title "Apartment Units for Wna Post Law Number 1 of 2020". With this title, the researchers formulated two formulations on the status of flat unit land status for foreign citizens and the requirements for foreign citizens to own flat units in Indonesia.

PROBLEM FORMULATION

Legal certainty for apartment units owned by foreign citizens

RESEARCH METHOD⁸

This research is a normative legal research with a statutory approach.

DISCUSSION

In order to support programs to increase Indonesian cooperation with other countries and improve the property industry in Indonesia. Which will have an impact on the number of foreign nationals working and building businesses in Indonesia, will indirectly increase the demand for housing for them. The government as an organ has the right to issue policies that can support usasha actors (domestic or foreign) by creating a friendly environment in the form of facilitating licensing, requirements by speeding up the process.⁵ With these aims and objectives, the government issued Law Number 11 of 2020 concerning Job Creation. The existence of regulations regarding the ownership rights of apartment units in Indonesia as stated in article 143 stipulates that the rights of apartment units are rights that are individual in nature which are separated from the joint rights of joint shares, collective land or collective property. Then in article 144 paragraph (1) it is stated that ownership rights to apartment units can be given to:

- a. Indonesian citizens;
- b. Indonesian legal entities;
- c. foreign citizens who have a license ⁵ in accordance with the provisions of laws and regulations;
- d. foreign legal entities that have representatives in Indonesia; or

³² Dan Akibat Hukum Terhadap Hak Milik Terselubung, *Jurnal Kertha Semaya : Journal Ilmu Hukum*, p. 5

⁵ Sumanto, L. (2017). Kepemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berdomisili Di Indonesia. *Jurnal Legislasi Indonesia*, 14(04), p. 455-462.

- e. representatives of foreign countries and international institutions that are located or have representatives in Indonesia.

From the aforementioned provisions, it can be explained that ownership rights to apartment units can be given to foreign citizens who have a license under the ⁴³ provisions of the laws and regulations, and the property rights ¹⁶ of these apartment units can be transferred or transferred and guaranteed. In this provision, it does not explain what land rights a foreign citizen can have, because in this provision there is a mention of ³⁸ ownership rights over apartment units. What can be interpreted that foreign citizens can have ownership rights over apartment units over ³⁸ land rights in the form of property rights, rights to building. Especially in article 145 of the Work Copyright Law states that the apartment is built on a Building Use Right, so that it is as if foreign citizens can have ownership rights over the apartment unit above the Building Use Right. With the provisions of the law on Job Creation, there can be new problems in the form of overlapping with the Basic Agrarian Law (UUPA) number 5 of 1960 and other laws and regulations relating to ownership rights to apartment units.

Before describing the land rights of apartment units for foreign citizens, the definition of a house with home ownership by foreign nationals is a building that is used as a residence for someone to take shelter or to bring his family to live in Indonesia ³¹. This can be likened to the use of houses for Indonesian citizens.⁶ Residence can be in the form of a house or flats, for a place to live in the form of a house, it is already attached to our memory how its form and use is, while for flats not everyone knows it. A flat is a multi-storey building whose building contains a private ownership system and there is joint ownership between the residents of the apartment. The existence of flats as an alternative for efficient housing, that there are three types of houses, namely as follows:⁷

- a. Flat is a multi-storey building with a vertical and horizontal development direction, each of which can be owned and used separately;
- b. Apartment which is a building ownership which consists of several units;
- c. Condominium is joint property, both building and joint facilities.

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⁶ Sri Endang Rayun Wulan dan Ruming tyas, *Analisis Hukum terhadap kepemilikan Rumah Tempat tinggal/Hunian Oleh orang Asing yang Berkedudukan di Indoensia*, Jurnal de Jure, Volume 10 No.11 September 2018, p. 64.

⁷ Hartanto, A. op.cit.

What is meant by this Joint section is for an apartment which is not separated for joint use in one function unit with the apartment unit. This Joint Section consists of columns, corridors, stairs, power lines and so on.⁸

Then for the definition of a foreign citizen is defined as a person who lives in a country and is not a citizen of that country.⁹ The definition of foreigners can also be seen from Article 1 of Law Number 24 of 2015 concerning Amendments to Unadang-Unadang Number 23 of 2006 concerning population administration that foreigners are people who are not Indonesian citizens. The same thing is also stated in Law No. 6 of 2011 on Immigration. Adeian Sutadi said that a foreigner domiciled in Indonesia is a foreigner who in Indonesia carries out economic activities and who he does periodically or at any time, he will need a house to live or live in.¹⁰ In such circumstances what they need is a place to live or occupy as a facility to manage or maintain their interests.¹¹

In obtaining land rights must meet material and formal requirements. The material requirements here must pay attention to the legal requirements of legal subjects who can receive land rights or ownership rights over apartment units, so that they are considered capable of taking legal actions.¹² The subject of ownership rights to a flat unit is a subject that meets the requirements as the holder of land rights, while the object in this case is a flat unit.¹³ Meanwhile, according to Sumardji, formal requirements are requirements that are held in the context of registration of transitional or transfer of rights which in the end is to obtain a certificate as proof of rights. Formal requirements are requirements related to the procedural transfer of ownership rights over the syringe, while the material requirements are offenses contained in the laws and regulations that must be fulfilled. The formal requirements also include the process of

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⁸ Purbandari. (2013). *Hak Milik Atas Satuan Rumah Susun Sebagai Jaminan Kredit*. *Lex Juri* 21a, 10(3), p. 189–203.

⁹ R. Subekti, *Tjitosoedibio, Kamus Hukum*, Pradnya Paramita (Persero), Jakarta, 2012, p. 45.

¹⁰ Adrian Sutadi, *Tinjauan Hukum Pertanahan*, Pradnya Paramita, Jakarta, 2009, p. 268.

¹¹ Tjiptip Santoso, *Hukum Pertanahan*, Kencana, Surabaya, 2014, p. 355.

¹² Rizky Ayu Nataria El Chidtian. (2013). *Hak Milik Atas Satuan Rumah Susun untuk Pertokoan yang Berasal dari Perjanjian Bangun Guna Serah Atas Tanah Hak Pengelolaan*. *Yuridika*, 28(1), p. 59–74.

transferring and registering land rights, either for the first time or for data maintenance.¹³

Ownership rights to sarusun are one of the objects of land registration as stated in Article 9 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, namely the objects of land registration include: a. Plots of land that are owned with property rights, use rights, building use rights, and use rights; b. Land management rights; c. Waqf land d. Ownership rights over apartment units e. Mortgage rights f. State land. Basically, ownership of land and building rights that can be obtained by foreign nationals is limited to usage rights and lease rights, this is based on article 42 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UPPA), which can have usufructuary rights. one of them is a foreigner who is domiciled in Indonesia.¹⁴

Based on Article 2 of Government Regulation Number 103 of 2015 concerning Ownership of Residential or Occupancy by Foreigners Domiciled in Indonesia: Article 2 (1) Foreigners can own a house for residence or occupancy with the Right to Use. (2) Foreigner who can own a dwelling house or dwelling as referred to in paragraph (1) is a Foreigner who holds a residence permit in Indonesia in accordance with the provisions of laws and regulations. (3) In the event that a Foreigner dies, the house or dwelling as referred to in paragraph (2) can be inherited. (4) In the event that the heir as referred to in paragraph (3) is a foreigner, the heir must have a residence permit in Indonesia in accordance with the provisions of laws and regulations. The government regulation also explains that foreign nationals who are allowed to own a house or residence are those who do provide benefits, do business, work or invest in Indonesia. Permitted here can mean that the presence of foreign nationals is not temporary.¹⁵

Based on this, foreign citizens can only have ownership rights to apartment units on land use rights.¹⁶ Because in Law Number 11 of 2020

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¹³ Rondonuwu, Giovanni. (2013). Kepastian Hukum Peralihan Hak Atas Tanah Melalui Jual Beli Berdasarkan PP Nomor 24 tahun 1997 tentang Pendaftaran Tanah. *Lex Privatum*, Vol.I/No.3/Juli/2013, 13(3), p. 51–59.

¹⁴ Putra, I. P. I. M. (n.d.). Kepemilikan Hak Pakai atas Tanah bagi Warga Negara Asing di Kabupaten Badung Provinsi Bali. *Jurnal Hukum Universitas Udayana*, p. 1–5.

¹⁵ Ardani, M. N. (2017). Kepemilikan Hak Atas Tanah Bagi Orang Asing Di Indonesia. *Law Reform*, 13(2), p. 204.

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¹⁶ Jacinda, I., Jusuf, J., & Ferdina, V. (2019). Penggunaan Tanah Di Indonesia Oleh Warga Negara Asing Melalui Perkawinan Campuran Dalam Falsafah Hukum. *ADIL: Jurnal Hukum*, 9(2), p. 61.

concerning work copyright there is no explanation of what land foreign citizens can own. Because it is not possible for foreign citizens to have ownership rights over land or rights to build, it will conflict with the provisions contained in the UUPA and the principles contained therein. The Principle of Nationality, which can also ²⁰ be called the principle of nationality, in this principle it is determined that only Indonesian citizens can have land rights on the basis of ownership rights without differentiating between male and female sex, while foreign citizens will not have ownership rights over ⁸ the as well as the transfer of property rights to people, this is prohibited as stated in Article 26 paragraph (2) of the UUPA.¹⁷ Whereas in Article 9 paragraph (1) UUPA has a close relationship that the relationship between the Indonesian nation and everything in the territory of the Indonesian state. The UUPA also distinguishes which land rights individuals and legal entities can have based on their status.¹⁸

Based on the intent and purpose of issuing this working copyright law to attract investors and facilitate licensing in Indonesia, the loosening of the property ownership rules for foreign nationals will have a negative impact on the property business in the country. It is feared that when the regulation on ownership of apartment units is loosened it will cause property prices to rise due to increased demand. When foreign citizens are free to own property in Indonesia, small developers will go bankrupt because of the increase in land prices. In the work copyright law it is not explained, so the regulation still relies on Government Regulation number ³⁴ 103 of 2015. To be more specific about the shift in apartment units, the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency issued residential ownership rules for foreigners. The ²³ regulation is the ² Regulation of the Minister of ATR / Head of BPN number 13 of 106 concerning Procedures for Granting, Releasing or Transfer of Rights to Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia. This rule is a follow-up to Government Regulation Number 103 of 2015 concerning Ownership of Residential or Residential Homes by foreigners domiciled in Indonesia. Article 3 number ¹⁷ ⁴¹ Regulation of the Minister of Agrarian Affairs Number 29 of 2016 concerning the procedures for Granting, Releasing, or Transfer of Rights to Ownership of Residential

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¹⁷ Sri Hajati, Dkk, *Politik Hukum Pertanahan*, Airlangga University Press, Surabaya, 2017, p. ¹

¹⁸ Nurlaila, N., Ismail, I., & Syahbandir, M. (2018). Kepemilikan Tanah Hak Milik Yang Dikuasai Bersama Warga Negara Indonesia (WNI) Dan Warga Negara Asing (WNA) Yang Diperoleh Berdasarkan Warisan di Provinsi Aceh. *Syiah Kuala Law Journal*, 2(2), p. 258-275.

Homes or Occupations ⁹ of Foreigners Domiciled in Indonesia that "Foreigners who hold a residence permit in Indonesia in accordance with the provisions of the laws and regulations, can have a house to live in or a residence with the Right to Use".

If detailed in outline based on Government Regulation Number 103 of 2015 are as follows:¹⁹

- a. foreign citizens can own one house or residence, it can be a flat unit or a house built on land use rights;
- b. The right to use on state land or the right to use over the land of ownership rights granted by the holder of the right of ownership with the deed of the official who makes the land deed can be used as a base for the right to an independent house;
- c. It must be recorded in the land book and certificate if the agreement granting usufructuary rights over the ownership rights. 25 (twenty five) years is the maximum period for granting usufructuary rights over the ownership rights, cannot be extended but can be renewed within a period of 20 (twenty) years. This must be in accordance with the agreement of the parties, and which becomes a note that the foreign citizen is still domiciled in Indonesia;
- d. If the house or condominium is established on use rights over state land, or based on an agreement with a right holder not ⁵ domiciled in Indonesia, then within a period of 1 (one) year the foreign citizen is obliged to transfer or relinquish his land and house rights to another party have qualified;
- e. If within a period of 1 (one) year it is not released or transferred to another party, the right to use the state land will be auctioned, while the right to use over land that is right of ownership will return to being the owner of the right of ownership over the land.

Foreign citizens can own flat units built on land use rights. In terms of their presence in Indonesia, these foreigners can be divided into 2 (two) groups, namely foreign nationals who reside in Indonesia permanently proven by a residence permit and foreigners who are in Indonesia at any time, it must be proven with a visit permit. or immigration permit.

Then in the Job Creation Law also regulates the Property Rights of Apartment Units can also be given to foreign legal entities that have representatives in Indonesia, this is one of the new things in the face of apartment units in Indonesia and representatives of foreign countries and international institutions . In the laws and regulations relating to flat units,

¹⁹ Sri Endang Rayun Wulan dan Ruming tyas, *Op.cit.*

there is no one that regulates ownership of flat units for foreign legal entities. Foreign legal entities are rarely found in detail in the theory of legal entities, however in the laws and regulations in Indonesia there are several regulations relating to foreign legal entities, for example in the UUPA, the Capital Investment Law, the Limited Liability Company Law.²⁰ Based on the land law, foreign legal bodies are contained in UUPA article 42 letter d, that foreign legal entities that have representatives in Indonesia can hold land rights, namely in the form of use rights. This is what distinguishes the use rights from other land rights that do not allow a foreign legal entity to own land rights such as property rights, HGU or HGB. Likewise, representatives of foreign countries and "international institutions" that are located or have representatives in Indonesia can obtain use rights based on Government Regulation Number 40 of 1996.

A foreign legal entity is a legal entity that is not established in the Indonesian jurisdiction and does not comply with Indonesian law by having a representative of the company in Indonesia to carry out company activities from its home country (legal entities that are "private. For representatives of" foreign countries " and international institutions that do not operate in Indonesia, so they are categorized as "legal" public bodies that can obtain usage rights.

For now there are no regulations governing the ownership of apartment units designated for foreign legal entities and state representative bodies and international institutions that do have dudun representatives in Indonesia. When viewed from the regulations mentioned above, these public and private legal entities can have use rights. How about the apartment unit for them, in the Government Regulation regarding the flat and the Government Regulation regarding the "House Ownership" where "residence or dwelling" by foreigners do not regulate the public and private legal entities.

When viewed from the position of foreign citizens, it can be equated with private and public legal entities in terms of ownership of a dwelling or place of residence, namely in the form of a flat unit. This is because in this case, foreign legal entities and state representative bodies can both own land use rights just like foreign citizens. So that it is possible for the legal entity and the representative body to have a flat unit with the condition that the flat structure stands on land use rights.

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²⁰ Permadi, I. (2012). Kedudukan Badan Hukum Asing Dalam Pemilikan Tanah Di Indonesia. *Jurnal Wacana*, 15(4), p. 40-48.

CLOSING

Conclusion

Based on Law Number 11 of 2020 concerning Work Copyright, which regulates property rights to apartment units. This regulation still does not provide clarity regarding the basis for land rights that can be owned by foreign nationals for apartment units. So that the arrangement regarding the ownership of apartment units refers to Government Regulation Number 103 of 2015 concerning Ownership of Residential or Residential Houses by Foreigners who are domiciled in Indonesia. Based on this regulation, the status of land rights of apartment units that can be owned by foreign citizens is the right to use. Foreign nationals who wish to own an apartment unit must meet the requirements and restrictions that must be obeyed in order to maintain and prioritize the interests of Indonesian citizens. In government regulations, restrictions on ownership of land and residential houses by foreign citizens domiciled in Indonesia have been given and ensure that the ownership of the land is properly utilized.

Recommendation

The suggestion given by Law Number 11 of 2020 should require implementing regulations regarding ownership of property rights to flat units by foreign citizens, these regulations must be issued by the Minister of Agrarian Affairs and Spatial Planning / National Land Agency. In the context of controlling foreign citizens, foreign citizens should be provided with regulations regarding the limits for purchasing apartment units and also regarding the minimum limit for the price of the land in a certain area zone.

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²⁴ Sri Hajati, Dkk, 2017, *Politik Hukum Pertanahan*, Airlangga University Press, Surabaya.

³³ Stefani Sampouw, *Pengaturan dan Peralihan Hak Milik atas Tanah Rumah Susun*, Lex Administratum.

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