

JURIDIC REVIEW OF GRANTING RIGHTS TO FLAT UNITS TO FOREIGN CITIZENS BASED ON THE PROVISIONS OF LEGISLATION IN INDONESIA

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Abstract

One of the efforts made by the state to improve the national economy is by increasing the number of investors working in the territory of Indonesia, then the impact of these activities causes the government to make a regulation that aims to attract foreign investors into Indonesia. Housing is a basic human need guaranteed by the constitution, because one form of arrangement made by the government is to give ownership rights to flat units to foreign citizens. The normative juridical research method uses an approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations. This approach is also known as the library approach, namely by studying various books, laws and regulations and other documents related to this research. Based on the results of research conducted, the granting of apartment unit rights to foreign nationals caused a debate, this is because the phrase property rights referred to in the basic agrarian law is known to only be attached to land that can be owned by Indonesian citizens, when reviewing the provisions of human rights law. Human rights guaranteed in the constitution give everyone the right to be able to control a right, including property rights which are the right to control objects.

Key words : Property Rights, Flat Units, Foreign Citizens

INTRODUCTION

At this time the constitutional system of a number of countries has developed and turned into a country with a system based on law. ¹The ideal concept of the rule of law has also been applied in Indonesia and this is included in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which states that "the State of Indonesia is a state of law". The meaning of the concept of the rule of law actually has many meanings, but at the core is that the state is obliged to guarantee justice for everyone.²

This understanding developed in Anglo Saxon countries, especially in England as *The Rule of Law* or countries whose powers are limited by law. ³At first, the state only had a limited role in maintaining the security of citizens, which was dubbed the night watch state (*nachtwachterstaat*). ⁴Along with the development of the times, a new idea emerged that the government was not only a *nachtwachterstaat*, but also played an active role in seeking the development of the welfare of its people. This idea is called a welfare state (*welvaarstaat/welfare state*) or a modern legal state, so that the state does not only serve as a night watchman, but also assumes a broader responsibility, namely realizing welfare and social justice for all its people. One of the implications of the state's obligation to improve the welfare of its people is that it has an obligation to be able to manage, maintain and defend land in order to provide benefits, especially to the Indonesian people. water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". Land is one of the sources of life for humans. Land in the framework of the Indonesian state is one of the main natural resources that has a function of historical value and economic value for the community to be able to increase the needs of daily life.⁵

At this time, one of the efforts made by the government is to stimulate the national economy by increasing investment activities. The main reason for investment as one of the drivers of the nation's economy is because of the many natural resources in the territory of Indonesia, but in terms of managing these resources, the human resources in it are not able to manage them, so assistance from outside parties is needed to manage them. Therefore, foreign investors are needed to invest in Indonesia. One of the implications of the arrival of foreign investors to Indonesia with many foreign nationals or referred to as foreigners who begin to live and settle in Indonesia, the result of such a situation is the need for residential housing ownership by foreigners. Residence is defined as a place that has a function to protect from the heat of the sun, can protect from rain, and other hazards that exist. Of course, the residence requires land as a place for the building to be erected.

The state, in this case the government, must have arrangements regarding the ownership of land rights, especially for foreigners domiciled in Indonesia so that the mandate contained in Article 33 paragraph (3) of the 1945 Constitution can still be carried out properly. That the earth, water and natural resources contained therein are used to realize the prosperity of the entire Indonesian people. Based on the above background, it will be seen how the arrangement of land rights ownership for foreigners in Indonesia will be. Land rights are rights to control land by the state which are granted to a person, group of people, or to legal entities, both Indonesian citizens and foreign citizens. ⁶The holder of property rights on a land has the authority to use and utilize the land he owns for the benefit of his life by complying with the regulations stipulated in the Basic Agrarian Law (UUPA) and other related laws and regulations. As stated in Article 33 of the 1945 Constitution where all natural resources and the national economy are controlled and implemented by the State for the welfare of the Indonesian people.

Ownership rights to land are the parent of building use rights, building lease rights, and use rights. Where the property rights can only be used by Indonesian citizens (WNI). Foreigners are not allowed to control land with property rights, as regulated in Article 26 paragraph (2) of the UUPA where if a foreigner gets ownership rights, the land is controlled by the state. This is to reduce the ownership of land by foreigners. Because in addition to keeping the land owned by Indonesian citizens from becoming land owned by foreigners, ownership of property rights also helps Indonesian citizens to use their land rights to support their lives. However, in the latest formulation contained in the Job Creation Act, precisely in Article 144 Paragraph (1) which in essence stipulates that Ownership Rights to flat units can be granted to Foreign Citizens who have permits in accordance with the provisions of the law,

¹Haposan Siallagan, " *Application of the Principles of the Rule of Law in Indonesia* ", Sosiohumanities Vol. 18, July 2016, p. 131.

²Deddy Ismatullah and Asep A. Sahid Gatara, *State Science in Multi Perspectives*, Pustaka Setia, Bandung, 2007, p.165.

³Dr. Drs. Muntoha., SH, *Indonesian State of Law*, Kaukaba Dipantara, Yogyakarta, 2013, page 3.

⁴Moh. Mahfud MD, *Law and the Pillars of Democracy*, (Yogyakarta: Gama Media, 2009), p. 22-24.

⁵Boedi Harsono, 2007, *Towards Completion of National Land Law*, Cet. 3, Trisakti University, Jakarta, p. 3.

⁶Urip Santoso, 2010, *Agrarian Law and Land Rights* , Jakarta, Kencana, p.87.

then it is clarified again in explanation of the article that such ownership only applies to Special Economic Zones, Free Trade Zones and Free Ports, Industrial Estates, and other Economic Zones.

In the Law on Flats, precisely in Article 8 paragraph (2) and paragraph (3), it is regulated regarding Ownership Rights to Flat Units which are interpreted as ownership rights to individual and separate flat units. In addition to ownership of the apartment unit, the ownership right to the apartment unit in question also includes the right to joint ownership of the so-called joint share, joint land, and joint objects, all of which are an inseparable unit with the ownership of the apartment unit concerned. In relation to joint rights to common parts, common objects, and common land which are closely related to the ownership of these flat units, Erwin Kallo explains in his book that individual ownership is the ownership right of someone who has purchased the apartment unit. The unit here is a room in a three-dimensional geometric shape bounded by a wall and used separately or not together. This individual right will usually be reflected in the description of the apartment. A description is a clear designation of the boundaries of each apartment unit, shared part, shared object, joint land, along with the Proportional Comparison Value (NPP) and its description. Regarding the area/size of the condominium unit ("Sarusun"), it will be seen and described in the SHM of the condominium unit for each owner.⁷

So, it can be concluded that the Ownership Rights in the Basic Agrarian Law are the strongest and most complete rights owned by people on land. While what is meant by property rights in the Flats Law is Ownership Rights on Flats, namely separate ownership of the common land, the joint part. and things together. However, apart from the differences in the category of Property Rights, the new rules contained in the Job Creation Act regarding ownership of Flat Units for Foreign Citizens are still contrary to foreign ownership rights as regulated in the UUPA and UURS. This in the future has the potential to cause polemics in ownership disputes. Therefore, it is necessary to know together about the implementation and impact of the new regulation on the wider community. Based on the problems that occurred in the birth of provisions for granting ownership rights to flats for foreigners, several formulations of problems will be discussed in this journal, namely, the first is related to the regulation of property rights to the apartment units obtained, then the second problem discussed in this paper is the implications that arise. arise as a result of the granting of ownership rights to flat units to foreigners.

RESEARCH METHODS

The normative juridical research method uses an approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations. This approach is also known as the library approach, namely by studying various books, laws and regulations and other documents related to this research.⁸ The approach method used in writing this thesis is a normative juridical approach. This approach synchronizes the applicable legal provisions in legal protection against other legal norms or regulations relating to the application of these legal regulations in practice in the field.⁹

paper examines the Juridical Review of Granting Rights to Flats to Foreign Citizens Based on the Provisions of Legislation in Indonesia. The specifications of the study were carried out using descriptive-analytical methods, namely through describing the applicable laws and regulations associated with legal theories and the practice of implementing positive law related to the problem.¹⁰ This research using a descriptive analysis method that is sourced from secondary data which ends with a conclusion as a form of answer to the problem formulation that is studied through scientific studies from various sources.

RESULTS AND DISCUSSION

A. PROPRIETARY RIGHTS TO FLAT UNITS PROVIDED TO FOREIGN CITIZENS BASED ON LEGISLATION

The concept of land according to the Basic Agrarian Law (UUPA) article 4 is the surface of the earth whose authority to use it includes the body of the earth, water and the space above it. In this sense, land includes land that already has a right on it or to which a right is attached according to the applicable laws and regulations. Meanwhile, according to Budi Harsono, he limits the meaning of land based on what is meant in Article 4 of the LoGA, that in land law, the word land is used in a juridical sense as an understanding that has been officially demarcated by the LoGA as stated in Article 4 that the right to control from the state is determined by the existence of

⁷ Erwin Kallo, *Legal Guide for Owners/Occupants of Flats (Condominiums, Apartments, and Rusunami)*, Minerva Athena Pressindo: Jakarta, p. 59.

⁸ Ronny Hanitjo Soemitro, *Legal and Jurimetric Research Methodology*, Cet. Fifth, (Jakarta: Ghalia Indonesia, 1994), page. 53.

⁹ Burhan Asofa, *Legal Research Methods*, (Jakarta: Rineka Cipta, 2001), page. 15.

¹⁰ Ronny Hanitjo Soemitro, *Op.Cit*, page. 97 – 98.

the law. There are various types of rights to the earth's surface which are called land, thus land in a juridical sense can be interpreted as the earth's surface as regulated in the UUPA. When reviewing property rights over condominium units, it is necessary to understand that there are several rights regulated in several laws and regulations which will be described as follows:

a) Ownership Right to Flat Units Based on Law Number 5 Year 1960 concerning Agrarian Principles

The first hierarchy determined under the LoGA is the rights of the Indonesian people. This right was born based on the principle of nationality where the provisions for wealth in it are prioritized for the prosperity of the people as stated in the goals of the state. Furthermore, the existence of the application of the principle of nationality departs from the basic concept of rights granted by the state to protect the basic rights of citizens, namely to meet the basic needs of the Indonesian people for clothing, housing and food.

According to Article 1 point (1) of the LoGA, it explains:

" The rights of the Indonesian people are the rights of the Indonesian people over the entire earth, water and space, including the natural resources contained therein, which are within the territory of the Republic of Indonesia."

The rights of the nation contain elements of ownership and elements of authority to regulate and lead the control and use of the shared land they have. The nation's rights to common land are not ownership rights in the juridical sense, so in the nation's rights there are also individual property rights to land and the task of authority to regulate is delegated to the state. The next right after the provisions of the rights of the Indonesian people is the right to control the state which originates from the granting of power from the Indonesian nation to the state as the Power Organization of the All-Indonesian People (Ruling Body) based on the provisions of Article 33 paragraph 3 of the 1945 Constitution and then further elaborated on in Article 33 paragraph 3 of the 1945 Constitution. in article 2 paragraph 2 of the LoGA:

" The State's right to control as referred to in paragraph (1) of this article authorizes: a. regulate and administer the designation, use, supply and maintenance of the earth, water and space; b. determine and regulate legal relations between people and the earth, water and space, c. determine and regulate legal relations between people and legal actions concerning the earth, water and space."

The next right after the right to control the state is ulayat rights which are regulated in article 3 in conjunction with article 5 of the UUPA. Customary rights are a series of authorities and obligations of a customary law community related to land located within its territory. This right includes all land that exists within the area of the legal community concerned, whether it is already owned by someone with individual rights or not. The holders of customary rights are customary law communities, while the object of customary rights is all land within the territory of the relevant territorial customary law community.

The last type of rights regulated in the UUPA is individual rights, individual rights are rights inherent in a person and one form of individual rights is property rights. Hak Milik is the strongest and most complete right that people can have on land. The granting of this character does not mean that the right is an absolute, unlimited and inviolable right as an eigendom right as formulated in Article 571 of the Civil Code. Such characteristics are contrary to the nature of customary law and social functions and every right. The words "strongest and most complete" have the purpose of differentiating from the right to cultivate, the right to build, the right to use and others, namely to show that among the rights to land that can be owned, the right of ownership is the strongest and most complete.

Thus, the strongest definition as formulated in Article 571 of the Civil Code is different from that formulated in Article 20 of the LoGA. Ownership rights based on Article 20 paragraph (1) are hereditary, strongest and fullest rights that can be owned by people on land keeping in mind the provisions of Article 6. Article 6 paragraph (2) states that property rights can be transferred and transferred to other parties. This is in line with the definition given by Boedi Harsono which defines property rights as inherited rights and gives the authority to use them for all kinds of purposes for an unlimited period of time as long as there is no special prohibition for it. Hereditary means that the right can be inherited successively based on the degree or the right becomes non-existent or asks for it again when there is a change of hands which has the following meanings:

- The period of time has unlimited rights.
- Registered rights and the existence of proof of rights While the fullest means:

- Ownership rights give authority to those who have the most extensive rights compared to other rights.
- Hak Milik is the parent of other rights.
- Ownership rights are not based on other rights.
- Judging from its designation, Ownership Rights are not limited.

Regarding the nature of property rights, it is indeed distinguished from other rights, as stated in Article 20 of the LoGA above. The granting of this character does not mean that the right is an absolute right, unlimited and inviolable, such a nature is very contrary to the nature of customary law and the social function of each right. The strongest and most fulfilled words are only meant to differentiate from the right to cultivate, the right to build, the right to use, and so on, namely to show that among the rights to land that can be owned by people, the right of ownership is the strongest and full.

As for those who can have property rights according to Article 21 of the LoGA, namely:

- Indonesian citizens; In this case, there is no distinction between the original citizens and those of foreign descent.
- Legal entities established by the government; as regulated in Government Regulation Number 38 of 1963 concerning the Appointment of Legal Entities that can have Ownership Rights on Land, among others:
 - i. State-established banks.
 - ii. Agricultural Cooperative Associations established based on Law Number 79 of 1963.
 - iii. Religious bodies appointed by the Minister of Agriculture/Agrarian after hearing the Minister of Religion.
 - iv. Social agencies appointed by the Minister of Agriculture/Agrarian after hearing the Minister of Social Affairs

With regard to property rights based on the provisions in the LoGA, it is a right that is only owned by Indonesian citizens and legal entities that are specifically specified in the LoGA, it can be concluded that the ownership rights to condominium units against foreigners are not regulated in the LoGA. When reviewing the provisions of other individual rights based on the provisions of Article 41 paragraph 1 of the UUPA, the right of use is the right to use or collect proceeds from land controlled directly by the state or land owned by another person, which gives the authority and obligations specified in the decision to grant it by the authorized official. give it or in an agreement with the owner of the land, which is not a lease agreement or a land management agreement, everything as long as it does not conflict with the spirit and provisions of the law.

The usufructuary rights can be granted for a certain period of time or as long as the land is used for certain purposes, free of charge, with payment or the provision of services in any form. Meanwhile, Article 42 of the LoGA explains that usufructuary rights can be granted to Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law and domiciled in Indonesia and foreign legal entities having representatives in Indonesia.

According to the provisions contained in the UUPA, there are several subjects of use rights, namely:

- Indonesian Citizen
- Indonesian Legal Entities
- Foreign Citizens domiciled in Indonesia
- Diplomatic representatives of foreign countries and representatives of international bodies
- Departments, government and non-departmental agencies, local governments
- Religious bodies and social bodies.

Term of Land Right to Use The term of land with right to use for public purposes is regulated in Article 45 paragraph 1 of PP 40/1996 is the right of use owned by Indonesian citizens, Indonesian legal entities, foreigners domiciled in Indonesia, Foreign Legal Entities having representatives in Indonesia are granted a maximum period of 25 years and can be extended for a maximum of 20 years. This indicates that what foreigners can get from flats or land units is the right to use.

- b) Ownership Right to Flat Units Based on Law Number 20 Year 2011 concerning Flats
The apartment unit or what is known as the condominium unit is a residential model offered by the state which is created due to the limited amount of land to build settlements while the number of human populations continues to increase so that efforts are needed to meet the basic needs for housing with suitable land. limited. When reviewing based on Article 1 point 1 of Law Number 20 of 2011 concerning Flats (Law 20/2011), it is explained that:

*" Story buildings built in a divided environment"
in functionally structured parts, both horizontally and vertically and are units that each can be owned and used separately, especially for residential areas equipped with shared parts, shared objects, and shared land."*

Based on the above provisions, it can be seen that a high-rise building that has several functions such as a residence or other functions and there are shared facilities can be referred to as an apartment. Then when reviewing further related to the types of flats as stipulated in Law 20/2011, there are four types of flats that need to be known, namely:

- Public Flats
- Special Flats
- Country Flats
- Commercial Flats

Furthermore, of the four types of flats, it is necessary to understand the function of the flats that have been described, such as public flats, which are flats that have the function of providing housing facilities for low-income people. The next type of flats are special flats that have a function to solve special board problems such as flats used for victims of natural disasters, health problems, or other problems with the same goal. Next is state flats or known as official houses, in this type of flat the basic difference between other official houses is related to the same building structure as flats, the use of official flats is generally intended for government officials to be able to live in these flats. The last type of flats that need to be discussed are commercial flats or known as apartments which are discussed in this paper.

- c) Technical Provisions for Ownership of Flats in Indonesia

When looking at the provisions of the mandate contained in the constitution, namely the granting of rights for everyone, including foreigners, to be able to have decent housing, it is important to study together. When reviewing the meaning of foreigners, Adrian Sutadi said that domiciled in Indonesia is a foreigner who carries out economic activities in Indonesia and when carrying out his activities in Indonesia regularly or at any time, he needs to have a residence or residence in Indonesia. The meaning of the word foreigner domiciled in Indonesia is a foreigner who has a residence permit in Indonesia. In addition, a residence permit for foreigners is required for foreigners who wish to have a residence or residence in the form of a single house or apartment unit. This is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning or the Head of the National Land Agency Number 13 of 2016 concerning Procedures for granting, relinquishing, or transferring rights to ownership of residential or residential houses by foreigners domiciled in Indonesia. This residence permit is divided into five residence permits, namely diplomatic residence permits, official residence permits, visit residence permits, limited stay permits, and permanent residence permits.

In addition, we can also see that in the Emergency Law Number 9 of 1955 concerning the Population of Foreigners who are allowed to live in Indonesia, they are divided into two groups, namely the first, those who obtain an entry permit (admission) by obtaining the right to live in Indonesia. for a certain period of time, secondly, those who are allowed to stay in Indonesia and are considered residents on a permanent basis or *gevestegd*. Based on this, the provision of guarantees for foreigners needs to be regulated in Indonesia and this has been regulated in the UUPA as previously explained, namely foreigners can only get the right to use a dwelling. The regulations for the continuation contained in the LoGA have undergone several developments, where at first the regulation regarding the granting of foreigners' rights to residential ownership was only regulated in Government Regulation no. 41 of 1996 concerning Ownership of Residential Houses or Occupancy by Foreigners Domiciled in Indonesia.

On December 22, 2015, the Indonesian government enacted Government Regulation no. 103 of 2015 concerning Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia, which came into force on December 28, 2015. Government

Regulation no. 103 of 2015 revoked and replaced Government Regulation no. 41 of 1996 which regulates the same. In essence, Government Regulation No.103 of 2015 stipulates a number of provisions and requirements to strengthen the legal framework for foreign nationals who wish to acquire residential property in Indonesia, which was previously regulated under Government Regulation no. 41 of 1996. Some of the main provisions based on Government Regulation No. 103 of 2015 are as follows:

Restrictions on Foreigners:

- a. Foreigners who are domiciled in Indonesia and have obtained the relevant residence permit (for example, diplomatic residence permit, official residence permit, visiting stay permit, limited stay permit, and permanent residence permit) can obtain residential property in Indonesia.
- b. Foreigners who are permitted to obtain residential property in Indonesia are foreign nationals whose existence provides benefits, conducts business, works, or invests in Indonesia.
- c. In the event that a foreigner dies, the house or residence can be inherited.
- d. In the event that the testator is a foreigner, the foreign heir must have a residence permit in Indonesia in accordance with the provisions of the legislation.

Restrictions on Property The residential property that can be owned by foreigners is only a residential house or apartment built on a plot of land with a Right of Use. However, the government sets various requirements (including a minimum price). To prove the ownership, foreigners will be given a Right of Use certificate for a residential house or a certificate of Ownership of a Flat Unit for Apartments. Foreigners are only allowed to buy a single house and/or a new apartment unit on the land with the Right to Use. According to Article 5 of Government Regulation no. 103 of 2015:

" Foreigners are given the Right of Use for a single house for the purchase of a new unit and the Right of Ownership for the Flat Unit above the Right of Use for the Condominium Unit for the purchase of a new unit "

Foreigners are allowed to take over a residential house built on a parcel of land with a Right of Use for a maximum period of 30 years, which can be extended for another 20 years, after the extension period ends, the Right of Use can be renewed for a maximum period of 30 years. This means that foreigners are entitled to property ownership for a maximum of 80 years. As for apartment ownership, Government Regulation No. 103 of 2015 does not specify the period of time for foreigners to be allowed to own their apartments, then other provisions that need to be understood which are regulated in this regulation are:

- a. Indonesian citizens who are married to foreign nationals have the same rights to land as other Indonesian citizens (eg property rights, building rights, business use rights), provided that the land rights are not joint property, which is proven by the existence of an agreement. separation of assets between husband and wife by notarial deed (there must be a prenuptial agreement between the spouses concerned).
- b. Foreigners who have owned residential property in Indonesia prior to the promulgation of Government Regulation No.103 of 2015 but have not obtained a residence permit in accordance with the applicable regulations, may request the competent authority to obtain such a permit.
- c. Because Government Regulation No.103 of 2015 provides for a longer period of Right of Use for residential houses (80 years) compared to that stipulated in Government Regulation No. 41 of 1996 (70 years), foreigners who have obtained a residence before the promulgation of Government Regulation No. 103 2015 may ask the party concerned to extend the term of the Right to Use the property. This matter needs to be criticized, namely for Indonesian Citizens, Indonesian Legal Entities, Foreign Legal Entities, the term of Right of Use on State Land is 25 years, can be extended 20 years, and can be renewed for 25 years (70 years), while Foreign Citizens have the term of Rights. Use on State Land for 30 years, can be extended for 20 years, and can be renewed for 30 years (80 years). This means that the term of Right of Use for Foreign Citizens (80 years) is longer than for Indonesian Citizens (70 years).
- d. If the heir is a foreigner who owns a house built on a Hak Guna land or in an agreement with the holder of land rights no longer domiciled in Indonesia, within a

period of one (1) year he must relinquish or transfer the rights to the house and land to another party, which fulfills the requirements.

- e. If the holder of the Right of Use is a foreigner but no longer has a residence permit in Indonesia, then:
 - Within a maximum period of 1 year, it must be transferred to another right subject who is entitled but is not a foreigner (Foreign Citizen).
 - May be released to Indonesian citizens or bequeathed to the rightful heirs.
 - If within a period of 1 year it has not been released or transferred to another party who meets the requirements, the House and Land will be auctioned off by the State, and the proceeds of the auction will become the property of the former Right Holder concerned.
 - If the Right to Use is located on land with Ownership Rights of another person, then the Single House on it becomes the property of the Holder of Land Rights (Hak Milik) based on an agreement between the Holder of Use Rights and Ownership of Ownership Rights.

d) Ownership Rights to Flat Units Based on Law Number 11 of 2021 concerning Job Creation

At this time, one of the efforts made by the government is to encourage national economic activities by improving the legal system which will later provide convenience in the implementation of investment in Indonesia. The real manifestation of the government's efforts to improve the investment climate in Indonesia is the establishment of a new legal provision that reduces the previous legal provisions. The form of this provision is in the form of a combination of several related regulations aimed at increasing economic value such as regulations related to investment, employment, and does not escape the basic part in carrying out business activities, namely land.

Provisions relating to land are regulated in Chapter VIII concerning land acquisition. Furthermore, when reviewing the provisions in which there are arrangements for the rights of foreigners to control over a residence, the provisions are regulated in the fourth section regarding land and the third paragraph concerning Flat Units for Foreigners. Article 143 explains the meaning of property rights that are different from the UUPA, namely:

"Ownership rights to flat units are ownership rights to flat units that are separate individuals with joint rights to shared parts, shared objects, and shared land."

Based on these provisions, it is necessary to compare them with the provisions contained in Article 20 paragraph 1 of the LoGA, namely:

"Property rights are hereditary, strongest and fullest rights that people can have on land, keeping in mind the provisions in article 6"

Based on these provisions, there are very clear differences in the meaning of property rights contained in the UUPA and the Copyright Law, where the Copyright Law eliminates the basic essence of the meaning of property rights as rights to ownership of land. Then the interesting thing that needs to be observed is that the ownership of the apartment unit is based on Article 145 CHAPTER VIII, the fourth part of the Ciptaker Law, it is explained that the ownership right to the apartment unit consists of:

"Ownership rights to apartment units can be granted to:

- a. *Indonesian citizens;*
- b. *Indonesian legal entity;*
- c. *foreign nationals who have permits in accordance with the provisions of the laws and regulations;*
- d. *foreign legal entities that have representatives in Indonesia; or e. representatives of foreign countries and international institutions that are or have representatives in Indonesia."*

Based on these provisions, it can be seen that one of the holders of ownership rights to the apartment unit is a foreigner who has a permit based on laws and regulations as well as a foreign legal entity. building is the right thing as regulated in the LoGA.

Furthermore, when studying based on the sociological aspects that arise from the granting of property rights to the apartment unit, there are several problems that will arise from these problems. The first impact caused by granting ownership rights to flat units to foreigners is related to the consequences of land prices that will continue to increase so that developers find it difficult to build houses at affordable prices. This is evidenced by data submitted by the

Central Statistics Agency (BPS) in 2014 the shortage of supply (*back log*) of flat units has reached 15 million units. As a result, low-income people cannot own a house ¹¹.

Thus, it can be interpreted that the consequences arising from the granting of property rights to flat units to foreigners, causing many foreigners to buy property in Indonesia in the form of apartments or flats in Indonesia, this will definitely make it difficult for low-income Indonesian citizens to buy it due to differences in income development. Indonesian citizens and foreigners.

Then the thing to note is that the presence of the new provisions has a positive enough impact on increasing sales of flats or apartments in Indonesia, this is reinforced by data submitted by Coldwell Banker Commercial, it is stated that the level of demand for apartments has begun to slow down since the second quarter of 2020 ago, to make it easier to understand the decline in apartment sales in Indonesia, the following data will be presented:

Table 1. Data Percentage of Decrease Of Apartment Sales In Indonesian Region¹²

| NO | REGION | PERCENTAGE |
|----|----------|------------|
| 1 | Surabaya | 32% |
| 2 | Bandung | 90% |
| 3 | Medan | 100% |
| 4 | Semarang | 100% |
| 5 | Batam | 100% |
| 6 | Bali | 100% |
| 7 | Makassar | 19% |

Based on the data above, we can understand some of the objectives of being granted ownership rights to flats or apartments to foreigners. First, when we look at the data above, which are central business cities in Indonesia, it shows that apartment sales are less attractive, even though due to limited land space, apartment development is a solution to meet basic human needs related to housing. Based on these data, it can be seen that currently many regions in Indonesia are experiencing a decline in unit sales and this has an impact on the existing units not being sold. The presence of the policy of granting ownership rights to flats has actually had a positive impact on the construction of apartments that have been made in Indonesia. When it has been reviewed from the philosophical, juridical, and sociological aspects, it can be seen that the establishment of a policy of granting property rights to flat units for foreigners has provided benefits for foreigners.

CONCLUSION

Occupancy is a basic right that must be fulfilled by the state and this is based on Article 28H of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to get a decent place to live. Everyone's meaning is not only for Indonesian citizens but the state is obliged to guarantee foreign nationals to get a decent place to live. If we look at the provisions contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which explains that the earth and natural resources are controlled to provide the welfare of the people. This provides an explanation that the efforts of the existence of foreign nationals have limitations to control the wealth contained in the earth. The existence of the regulation on the limited authority of foreigners who cannot control land rights is reflected in the prohibition of control over flat units as a form of property rights. This is evidenced by the provisions contained in the UUPA.

However, at this time efforts are being made by the state to improve the national economy by making policies that can attract foreigners to be able to invest in Indonesia. One of the policies established by the government to provide attractiveness to investors is the granting of property rights to flat units for foreigners. At first the existence of this policy caused debate in the community because it was considered to have violated the principles contained in the LoGA. However, if you review the provisions contained in the Cipatker Law, in fact, the granting of rights to a flat unit is limited to the apartment room / apartment unit.

¹¹ Alfin Tofler, and Evi Rahmayanti, "Foreign Investors Can Own Property? This is the Profit and Loss", <https://www.bareksa.com/berita/berita-ekonomi-terkini/2015-05-15/investor-asing-may-have-properti-ini-untung-dan-ruginya>, last accessed on 5/6/2022.

¹² Monica Wareza, " **Destroyed beyond help, the fate of the apartment is now at the end of the horn**" , <https://www.cnbcindonesia.com/news/20211218062930-4-300216/hancur-tak-tertolong-nasib-apartemen-kini-diujung-tanduk>, accessed on 15 June 2022 at 14.50 WITA

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