
LEGAL ANALYSIS OF THE GRANTING OF OWNERSHIP RIGHTS TO APARTMENT UNITS FOR FOREIGN CITIZENS IN GOVERNMENT REGULATION NUMBER 18 OF 2021 CONCERNING MANAGEMENT RIGHTS, LAND RIGHTS, APARTMENT UNITS AND LAND REGISTRATION REVIEWED FROM THE PRINCIPLES OF THE MATERIAL CONTENT OF THE LEGISLATION

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Abstract

Granting ownership rights to apartment units for Foreign Citizens is one of the efforts to increase investment and the national economy. The establishment of harmonious and integrated laws and regulations is needed to develop laws and regulations that support national development in general. This journal will discuss four key principles: legal certainty, harmony, compatibility, and justice. While these principles may not be explicitly stated, they are acknowledged and implemented in state administrative practices. Nevertheless, granting these rights introduces various legal challenges, particularly regarding the ownership of land and buildings, including apartment units by foreign nationals in Indonesia, which must comply with Indonesian national law based on the nationality principle. It should be remembered that land and buildings/apartments on it are separate rights because the UUPA adopts the principle of horizontal separation. Therefore, buildings/apartments located on the land are no longer a single unit of the land so ownership of the building/apartment is not the property of the landowner. Granting ownership rights to apartments to foreign nationals, automatically reduces the welfare of the people in obtaining a place to live. By granting an increase in the status of rights to foreign nationals over flats, it also results in a conflict with the previously regulated legal regulations contained in the UUPA regarding the status of rights granted to foreign nationals only as usage rights, so it is feared that it will cause legal uncertainty. Regarding the implementation of the principles of the contents of the laws and regulations in the provisions on granting ownership rights to flats for Foreign Citizens contained in Government Regulation Number 18 of 2021, one of which is to overcome this legal problem, there needs to be provisions that limit the granting of ownership rights to flats to foreign nationals.

Keywords: *Principles of Material Content of Legislation, Flats, Foreign Citizens.*

A. INTRODUCTION

Every human being needs to fulfil their needs properly to live as a perfect human being, both individually and as part of society. A house is a human need as a place to live. The need for a house as a place to live or a residence if related to human rights, then a place to live (housing and settlements) is a right for everyone, as regulated in Article 28 H paragraph (1) of the 1945 Constitution (Irwan, 2021). These basic needs must be respected, protected, upheld, and advanced by the Government of Indonesia as a country with a large population that has built and freed up a lot of land for the development of settlements, housing, or apartments, especially in large cities in Indonesia to fulfil the needs of Indonesian citizens for a residence so that the primary need, namely a house as a place to rest, can be met.

This development was initiated by the state with the construction of PERUM or PERUMNAS in the form of houses collected in one housing complex and flats that are lined up vertically upwards. Usually the development of housing by the state aims for people to be able to buy housing at a fairly cheap price. Then the private sector carries out the construction of housing, both ordinary housing and elite housing and also apartments, the purpose of which is commercialization, where the private sector carries out the construction in order to gain profits from the sale of housing to people who are interested in buying the houses or apartments they build.

Housing or apartment development involves land development. Land, as defined in Article 4 of Law Number 5 of 1960 on Agrarian Principles (UUPA), refers to the earth's surface. This article outlines that land rights encompass control over land, granting a series of authorities, obligations, and/or prohibitions to the rights holder regarding their owned and controlled land. What is permitted, required, or forbidden forms the content of the control right, serving as the distinguishing factor between various land control rights as governed by land law. Housing can take various forms, including apartments and flats (Dwiyatmi, 2020).

According to Law Number 20 of 2011 concerning Flats, apartments or flats are multi-storey buildings constructed within an environment and divided into functionally structured sections, both horizontally and vertically. These sections are units that can be individually owned and used, primarily serving as residences. They are equipped with shared parts, common objects, and common land (Gaol, 2018).

On February 2, 2021, the government issued Government Regulation Number 18 of 2021 regarding Management Rights, Land Rights, Flat Units, and Land Registration. This regulation serves as a technical guideline for how a legal subject can obtain land rights. However, Chapter V, Article 67, Paragraph (1), Letter C states that ownership rights to flat units can be granted to foreigners who have a residence permit in Indonesia. This regulation has altered the provisions concerning flat ownership by foreign citizens (WNA). Previously, foreign nationals could only own flats through the right of use or building use rights, while ownership rights were reserved exclusively for Indonesian citizens (WNI) (Motulo, 2019).

In granting a Right to a Flat Unit, it is necessary to consider the legal basis on which the building stands. Especially for foreign citizens who will own an apartment in Indonesia, it is necessary to look at the category of land and rights used by the apartment developer in building the apartment so that ownership of an apartment unit purchased by a foreign citizen does not create new problems for the administration of government. Ownership of land and buildings on it, including ownership of flat units by foreign nationals in Indonesia, is subject to the provisions of Indonesian national law by the principle of nationality (Baharuddin et al., 2023). This principle of nationality in the agrarian sector was originally regulated and applied in Indonesian national land law, then in the field of housing and settlement development and finally in the organization of flats. It should be remembered that land and buildings/flats on it are separate rights because the UUPA adheres to the principle of horizontal separation, therefore buildings/flats located on the land are no longer a single unit of the land so ownership of the building/flat is not the property of the land owner. However, by granting ownership rights to flats to foreign nationals, it automatically reduces people's welfare in obtaining a place to live (Maufiroh et al., 2021).

By granting an increase in the status of rights to foreign nationals over flats, it also results in a conflict with the previously regulated legal regulations contained in the UUPA regarding the status of rights granted to foreign nationals only as usage rights, so it is feared that it will cause legal uncertainty (Arhdan, 2022).

Based on the above explanation, the researcher aims to examine the implementation of the principles outlined in the laws and regulations regarding the provision of ownership rights to flats for Foreign Nationals, as stipulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats, and Land Registration.

B. LITERATURE REVIEW

1. Principles of the Content of Legislation

The principle of the material content of statutory regulations is the principle that regulates the material or content of a statutory regulation. The principles of the material content of the statutory regulations are stated in Article 5 of Law Number 12 of 2011 concerning the Formation of Legislation. Article 6 of Law Number 12 of 2011 stipulates that statutory regulations must meet the following principles of material content:

a) Principle of Protection

The principle of legal certainty is a fundamental principle in the material content of legislation, ensuring that every aspect of statutory regulations is designed to provide protection and establish public order (Siagian & Utama, 2021).

b) Principle of Humanity

The principle of humanity signifies that all material content of statutory regulations must proportionally reflect the protection and respect for human rights, as well as the dignity and honor of every citizen and resident of Indonesia (Munte & Sagala, 2021).

c) Nationality Principle

The nationality principle indicates that all material in legislation must embody the nature and character of Indonesia's diverse population while upholding the principles of the Unitary State of the Republic of Indonesia (Dharmajaya et al., 2023).

d) Family Principle

The family principle means that every material contained in legislation must reflect deliberation that is useful for reaching consensus in every decision-making (Yazdi et al., 2024).

e) Archipelagic Principle

The Archipelagic Principle dictates that all material within legislation must consistently consider the interests of the entire territory of Indonesia (Lekipiouw et al., 2021).

f) Bhineka Tunggal Ika Principle

The Bhineka Tunggal Ika principle emphasizes that all material within legislation must consider the community's background, encompassing the diversity of the population, religion, ethnicity, and groups, as well as special regional conditions and cultural aspects in the life of society, nation, and state (Khoirum et al., 2023).

g) Principle of Justice

The Principle of Justice means that every material contained in legislation must reflect proportional justice for every citizen (Gusman, 2023).

h) Principle of Equality in Law and Government

The Principle of Equality in Law and Government stipulates that every material within legislation should be free from any form of discrimination based on religious background, ethnicity, race, gender, or social status within Indonesian society (Saputri & Kurniawan, 2022).

i) Principle of Order and Legal Certainty

The Principle of Order and Legal Certainty dictates that every component of legislation must foster societal order by providing legal assurances (Permadi, 2020).

j) Principle of Balance, Harmony, and Consistency

This principle means that every material contained in legislation must reflect balance, harmony, and congruence between the interests of individuals, society and the interests of the nation and state (Prabandani, 2022).

2. General Description of Legislative Content

Article 1 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration (PP 18/2021) delineates several significant terms utilized within the regulation. These terms encompass:

- a) Management rights are the rights to control and use land directly controlled by the state for development purposes for a certain period.
- b) Land rights are rights inherent in land that give the holder the power to control, use, utilize, and maintain the land.
- c) Apartment units are parts that are structured vertically and/or horizontally, which stand alone and stand on land that is a unity with other parts that are complete and facilities for housing or other activities.
- d) Land registration is a series of activities carried out by holders of government authority in the land sector to regulate and facilitate the granting of land rights, management rights, ownership rights to apartment units, and mortgage rights (Shella & Ramasari, 2022).

According to Article 4 of Law Number 5 of 1960 concerning Agrarian Principles, it is specified that under the right to control from the State as mentioned in Article 2, there exist diverse forms of rights to the earth's surface, denoted as land, which can be granted to and possessed by individuals, either individually or collectively with other individuals and legal entities. Subsequently, as outlined in Article 9: a) Solely Indonesian citizens possess full rights over land, water, and airspace, subject to the conditions outlined in Articles 1 and 2; and b) Each Indonesian citizen, irrespective of gender, enjoys equal opportunities to acquire land rights and to reap its benefits, both for themselves and their families (Sulistio, 2020).

The state grants land rights as a means for its citizens to be able to use, manage and maintain the earth in the territory of the country. Of course, this is one indicator of increasing quality resources for the country as reinforced through Article 6 of Law Number 5 of 1960 concerning Agrarian Principles. However, of course, the regulations on Land and Apartment Rights and their use can be used by Foreign Citizens. As per the third paragraph of Law Number 11 of 2020 concerning Job Creation, within the land cluster delineated in Article 144, subsections c, d, and e, ownership rights to apartment units may be granted to foreign citizens holding permits by prevailing laws and regulations, foreign legal entities represented in Indonesia, or representatives of foreign countries and international institutions present in Indonesia. Article 2 affirms that ownership rights to apartment units are transferrable, assignable, and can be pledged. Article 3 further specifies that ownership rights to apartment units can be secured by encumbrances by statutory provisions (Simamora & Sarjono, 2022). Article 145 also states:

- a) Apartments can be built on land in the form of building use rights or use rights on state land or building use rights or use rights on management rights land.
- b) The granting of building use rights for apartments as referred to in paragraph (1) letter a can be granted simultaneously with an extension of the rights after receiving a certificate of functional feasibility.
- c) The granting of building use rights for apartments as referred to in paragraph (1) letter b can be given an extension and renewal of the rights if a certificate of functional feasibility has been obtained.

On February 2, 2021, Law Number 11 of 2020 concerning the Land Cluster Job Creation was revised via Presidential Regulation Number 18 of 2021. This Presidential Regulation consolidates (Omnibus Law), harmonizes, synchronizes, renews, and annuls provisions deemed obsolete by the law.

In Presidential Regulation Number 18 of 2021 in Article 67 paragraph 2 which regulates flats, it states that In addition to being given to as referred to in paragraph (1), ownership rights to Flats Units can also be given to Central Government agencies or Regional Government agencies. And in Article 3 it is stated that Ownership Rights to Flats Units granted to Central Government agencies or Regional Government agencies as referred to in paragraph (21) cannot be guaranteed by being burdened with mortgage rights (Saraswati et al., 2023).

In the second section regarding the Division and Merger of Ownership Rights of Apartment Units in Article 68, it is stated that:

- a) Ownership rights of apartment units can be divided or merged by attaching a change to the deed of separation of ownership rights of apartment units that has been approved or authorized by an authorized official by the provisions of laws and regulations (Çağdaş et al., 2020).
- b) If the ownership rights of the apartment unit in question are burdened with mortgage rights, the division or merger as referred to in paragraph (1) is carried out after obtaining written approval from the mortgage holder (Heridah & Kasim, 2022).

C. METHOD

The type of research employed in drafting this law is normative legal research (normative juridical). The data utilized in this study comprises secondary data derived from primary legal sources, secondary legal sources, and tertiary legal sources. Primary legal sources include Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. Secondary legal sources encompass data acquired through literature reviews, including legal opinions, books, articles, and journals from official websites relevant to the author's research inquiries. Tertiary legal sources refer to materials offering guidance on primary and secondary legal materials. The methodology for collecting legal materials involves conducting a literature review to obtain primary, secondary, and tertiary legal materials. Data analysis employs a qualitative descriptive method with a deductive approach, commencing with legal regulations and subsequently addressing real-world issues. The qualitative method aims to systematically analyze the research findings, progressing from positive legal theories to elucidate research problems in clear, logical, and scholarly sentences.

D. RESULT AND DISCUSSION

1. Legal Analysis Based on the Principles of Legislative Content

Legislation as a System The need for harmonious and integrated legislation is a very necessary need to realize order, and ensure certainty and legal protection. The formation of harmonious and integrated legislation is needed to develop legislation that supports national development in general. There are 4 principles that the author will explain in this journal, namely the principle of legal certainty, the principle of harmony and certainty, and the principle of justice, although not explicitly, these principles have been recognized and applied in the practice of state administration. For example, the principle of legal certainty is applied in the Constitutional Court Decision No. 9/PU-I/2000 which states that criminal law cannot be applied retroactively. The principle of harmony is applied in the Constitutional Court Decision No. 46/PU-XIV/2016 which states that laws that are not in harmony with the constitution must be revoked.

The principle of harmony is applied in the Constitutional Court Decision No. 34/PU-XIV/2016 which states that customary law that does not conflict with the values of Pancasila and human rights must be recognized. Therefore, although the principles of legal certainty, the principle of harmony, and the principle of harmony are not explicitly stated in the constitution,

the following principles are fundamental principles that guarantee the upholding of justice and legal certainty in Indonesian society.

The main principle that must be upheld in every constitutional state is that lower laws and regulations always implement higher laws and regulations. Lower laws and regulations must not deviate from, or override, or contradict higher laws and regulations. Furthermore, from the perspective of those authorized to form laws, the lawmakers form a hierarchical unity, starting from the highest lawmaker to the lower one and then to the lowest. Higher lawmakers delegate their authority to lower lawmakers by Law Number 12 of 2011 concerning the Formation of Laws and Regulations (Hierarchy of Laws and Regulations). The problem is how to overcome conflicts, and the boundaries of differences between the provisions of laws and regulations as subsystems or legal systems in a national legal entity so that they are not hindered by differences and there is no overlap or duplication.

The author's analysis of the Granting of Ownership Rights of Apartment Units for Foreign Citizens in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration reveals several Principles of Material Content of Legislation. These principles comprise the principle of legal certainty, the principle of harmony, the principle of compatibility, and the principle of justice.

2. Principle of Legal Certainty

The principle of legal certainty was formulated by Gustav Radbruch, a German legal expert. This principle states that the law must be clear, unchanging, and can be applied fairly to everyone. Without legal certainty, society will have difficulty understanding and obeying the law, thus creating uncertainty and injustice (Prayogo, 2016). In the context of granting ownership rights to apartment units for foreign nationals, PP 18/2021 has fulfilled the principle of legal certainty by explicitly regulating that foreign nationals can have ownership rights to apartment units, with certain conditions. Article 67 paragraph (1) letter c of PP 18/2021 stipulates that ownership rights to apartment units can be granted to foreign nationals, with the following conditions: a) The foreign national has a permanent residence permit in Indonesia; b) The foreign national has the financial ability to purchase an apartment unit; and c) The foreign national has a legitimate purpose of purchasing an apartment unit. These regulations have provided legal certainty for foreign nationals who wish to own an apartment in Indonesia. Foreign nationals can know clearly and firmly that they can have ownership rights to apartment units, by fulfilling certain conditions.

3. Principle of Harmony

The principle of harmony states that there must be conformity between legal norms and there must be no conflict. If there is a conflict, the higher legal norm will trump the lower norm. This principle is important to maintain order and coherence in the legal system. The Basic Agrarian Law (UUPA) and Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration embody a principle of harmony in governing apartment ownership for Foreign Citizens (WNA). This principle of harmony can be seen from several aspects, including:

- a) The principle of the unity of land law. This principle states that all land in Indonesia is a single entity that cannot be divided, either physically or legally. This principle is reflected in the provisions of Article 1 of the UUPA which states that "Land and water are controlled by the State and used for the greatest prosperity of the people". This provision is also reflected in Article 67 paragraph (1) letter c of PP 18/2021 which states that ownership rights to apartment units can be granted to foreign nationals. Thus, the implementation of Government Regulation Number 18 of 2021 may involve a number of complex considerations, including the balance between economic interests, foreign

investment, national interests, and the protection of local communities. It is important to understand that every step in the implementation of the regulation must be carried out carefully and pay attention to the various impacts and long-term implications.

- b) Principle of national interest. This principle states that land use must be directed towards national interests. This principle is reflected in the provisions of Article 2 of the UUPA which states that "Land as a source of invaluable national wealth, is controlled by the State for the greatest prosperity of the people". The execution of Government Regulation Number 18 of 2021 regarding Management Rights, Land Rights, Apartment Units, and Land Registration must adhere to the principle of national interests, as delineated in Article 2 of the Basic Agrarian Law (UUPA). The following are some ways in which the principle of national interests can be implemented through these regulations:
- 1) Infrastructure Development: Land use must be directed towards national interests, such as infrastructure development that supports economic growth and public welfare. These regulations can regulate the use of land for infrastructure projects that are important for economic growth and national interests, such as highways, airports, ports, and so on.
 - 2) Affordable Housing Development: These regulations can direct the use of land for the development of affordable housing for the community, which is an important part of government policy to increase access to adequate housing.
 - 3) Environmental Protection: The principle of national interests also includes environmental protection. The regulation may contain provisions governing sustainable and environmentally friendly land use, as well as prohibiting or limiting activities that damage the environment or natural resources.
 - 4) Strategic Areas: The government may designate strategic areas that have important value for national interests, such as defence, security, or research and development areas. The regulation may regulate land use in these areas by the national interests concerned.
 - 5) Control of Foreign Investment: The principle of national interest can also be implemented through control of foreign investment in land use. The regulation may contain provisions governing foreign investment in land use, to ensure that national interests and the interests of local communities remain protected.

Through various provisions contained in Government Regulation Number 18 of 2021, the government is expected to be able to implement the principle of national interest effectively to ensure that land use in Indonesia is in line with broader national interests and brings benefits to society as a whole. Thus, the causal relationship between the principle of national interest in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration can be seen to direct land use by broader national interests, which include sustainable development, environmental protection, economic growth, and improving community welfare.

4. Principle of Harmony

UUPA explicitly states that land rights and ownership rights to apartment units can only be owned by Indonesian citizens (WNI). This is emphasized in Article 20 paragraph (1) of UUPA which states that "Ownership rights to land can only be owned and controlled by native Indonesians and Indonesian citizens who have resided in Indonesia for at least 10 years. The provisions on apartments for foreign nationals are contrary to the principle of harmony of UUPA because they give foreign nationals the right to own and control land in Indonesia, even though these rights can only be owned by Indonesian citizens. This can cause problems in the

future, such as land ownership by foreign nationals which can threaten state sovereignty (Ardani, 2017). In addition, the provisions on apartments for foreign nationals also contradict Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

This provision gives foreign nationals the right to own and control land in Indonesia, even though land is a natural resource controlled by the state and used for the greatest prosperity of the people. This can cause problems in the future, such as land ownership by foreign nationals which can reduce the potential for land use for the greatest prosperity of the people. Therefore, the provisions on flats for foreign nationals need to be reviewed so that they do not conflict with the principle of harmony of the UUPA and Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Article 9 paragraph (1) of the UUPA states that "foreigners are not permitted to have rights to certain land." The rights to certain land in question are ownership rights, business use rights, building use rights, and use rights.

Meanwhile, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration (PP 18/2021) regulates the provisions on flats for Foreign Nationals (WNA). Article 69 paragraph (1) of PP 18/2021 states that foreign nationals who can own a residential house or dwelling are foreign nationals who have immigration documents by the provisions of laws and regulations and have a residence permit in Indonesia. Based on these provisions, foreign nationals can own property rights to apartment units in Indonesia, provided that they have a residence permit in Indonesia. The provisions of PP 18/2021 concerning ownership of apartments by foreign nationals are contrary to the principle of harmony of the UUPA. The principle of harmony is a principle that regulates that the provisions in laws and regulations must be harmonious and not contradict each other.

In this case, the provisions of PP 18/2021 that allow foreign nationals to have ownership rights to apartment units contradict the provisions of the UUPA which prohibit foreign nationals from having rights to certain land. The following are several contra-principles of the harmony of the UUPA with the provisions on apartment units for foreign nationals according to PP 18/2021:

a) Violates the Principle of Nationality

The principle of nationality asserts that land is a resource under state control and is intended for the overall welfare of the populace. Under this principle, only Indonesian citizens are entitled to land ownership in Indonesia. The provisions of PP 18/2021 that allow foreign nationals to have ownership rights to apartment units contradict the principle of nationality because they grant land ownership rights to foreigners.

b) Inhibits Land Control by the State

The government holds the authority to oversee land that remains uncultivated, unused, or not by its designated purpose. Ownership rights to apartment units held by foreign nationals constitute land rights subject to state control. Provisions within PP 18/2021 permitting foreign nationals to possess ownership rights over apartment units may impede the government's land control efforts, as it could complicate the process of reclaiming land that remains uncultivated, unused, or not in alignment with its designated purpose.

c) Increase the Risk of Land Speculation

The provisions of PP 18/2021 can increase the risk of land speculation because it can cause an increase in land prices. This is due to the demand for land from foreign nationals who want to have ownership rights over apartment units in Indonesia. Land speculation can be detrimental to the community because it can cause an unreasonable increase in house prices. Based on the contra principle of harmony, the provisions of PP 18/2021 concerning ownership of apartments by foreign nationals need to be reviewed.

5. Principle of Justice

The principle of justice is one of the basic principles of law that must be considered in every drafting of legislation. This principle has several meanings, including: a) Distributive justice: Ensuring the distribution of resources that are equal and fair to all members of society; b) Corrective justice: Correcting injustices that have occurred in the past; and c) Commutative justice: Providing appropriate compensation for losses suffered by a person.

Based on the analysis, the granting of ownership rights to apartment units for foreign nationals can be analyzed based on the following principles of justice:

a) Distributive Justice

The granting of ownership rights to apartment units for foreign nationals is feared to worsen the inequality of property ownership in Indonesia. Foreign nationals who have large capital have the potential to buy SRS in large quantities so local people who have limited capital will find it increasingly difficult to own property.

b) Corrective Justice

The granting of ownership rights to SRS for foreign nationals can be seen as an effort to improve past policies that limit property ownership by foreign nationals. This is expected to encourage investment and increase Indonesia's economic growth.

c) Commutative Justice

The granting of ownership rights to SRS for foreign nationals can provide benefits to local communities, such as the creation of jobs and increasing property values around the apartment development location. However, it is important to ensure that local communities also receive fair and equitable benefits from this policy.

E. CONCLUSION

Granting ownership rights to apartment units for Foreign Nationals (WNA) is intended to boost investment and the national economy. However, this move may potentially diminish people's access to housing and welfare. Government Regulation Number 18 of 2021 alters the provisions regarding apartment ownership by foreign nationals, transitioning from solely the right to use or utilize the building to ownership rights under specific conditions. The aspects of legal certainty and harmony in PP 18/2021 ensure that foreign nationals can have ownership rights to apartments by applicable provisions. This harmony reflects national interests and environmental protection, as well as economic growth and public welfare.

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