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Legal Review of Foreign Ownership Restrictions the Apartments and Units Flats in Indonesia

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Abstract:

As a rule of law and in accordance with the principles espoused by the national Land Law as well as the mandate of Article 33 paragraph (3) of the 1945 Constitution, Indonesia has policies and rules, especially relating to the ownership of land and material, in which all the land in the territory of the Republic of Indonesia are the property of the nation Indonesia is assigned to the command of the State Republic of Indonesia to be used for the greatest prosperity of the people of Indonesia. Therefore, foreign ownership of property in Indonesia is limited by the ownership of the property with the base right of the right of use (hak pakai). With a base such rights allow foreigners to own apartments or flats units. This is possible because of the principle of horizontal separation. Based on this study intended to examine why the land policy to limit foreign ownership of the apartment and the flats units. For his research and writing is made and prepared by the method of juridical normative research that uses qualitative analysis of data derived from primary legal materials, secondary legal materials relating to the ownership and foreign ownership restrictions on apartments and flats units. This study approaches the law (Statute approach) is done by reviewing some laws and other regulations relevant to the provisions, rules and restrictions on foreign ownership of apartments and flats units in Indonesia.

Keywords: *Restrictions, Foreigner, Ownership, Apartment and the Flats Units*

1. Introduction

The presence of the foreign citizen / WNA (or foreigner) in Indonesia is gradually increasing, especially in the era of globalization, where many foreign companies operating in Indonesia who need housing to live his daily life. The foreigner is a foreigner who own and maintain the economic interests in Indonesia to implement the investment to have a residence or dwelling house in Indonesia.

Stakeholders in the area of the property desirous that foreigners can own property (mainly apartments) in Indonesia. In this case it seems, the government supports foreign nationals can own property in Indonesia is seen in Article 52 of Act No. 1 Year 2011 about Housing and Settlement Region, which states, foreigners can inhabit or occupy the house by way of lease or the right of use. Minister of Housing Suharso Monoarfa revealed, it has to make sure foreigners can own property in the country through the adoption of the law.

Related to this, the Government proposed changes to government regulations related to foreign ownership of property in Indonesia that carries Amendment UUPA. Head of BKPM, Gita Wirjawan said people familiar with the aforementioned changes can rent a property in Indonesia for 90 years. "Foreigners can own property only restricted to the strata (apartment), but that has not been able to house," in this case the foreign ownership is restricted to the strata title at level four and above. Rules of property ownership for foreigners is a plan change PP. 41 year 1996 in which would allow foreigners renting properties in Indonesia. However, the government does not provide absolute freedom on foreign ownership. Restriction is done by considering a mechanism to finance the purchase of foreign property in Indonesia.

This provision for foreigners to own property in Indonesia, on the one hand it's good because it can increase the activity in the real sector and increase tax revenue for the State. However, if the tap foreign ownership of property to be opened, it is believed that the demand for luxury apartments will rise dramatically as property prices in Indonesia are very cheap in the world. Although the actual if the government really wants to prosper his people, opening up commercial property ownership by foreigners is a clear form to make the effort.

As a state law, Indonesia has policies and rules, especially relating to the ownership of land and material, in which all the land in the territory of the Republic of Indonesia Indonesia is a nation that belongs to his command was assigned to the State of Republic of Indonesia TO be used for the greatest prosperity of the people of Indonesia. The 1945 Constitution declared, every Indonesian citizen is allowed to master and use the land belongs together with any rights provided by the Land Law, except that is not expressly allowed by the relevant regulations. This means that only Indonesian citizens are allowed to control and use of land belonging together with

any rights. It is within their principle contained in Article 9 of Act No. 5 year 1960 about the Basic Regulation of Agrarian (hereafter UUPA), which states, "only Indonesian citizens who have full relations with the earth, water and airspace, within the limits of the provisions of Article 1 and Article 2 jo provisions Article 21 paragraph (1) of the UUPA, which states, only Indonesia citizens may have the Property.

Based on this principle, the only citizen of Indonesia, located in the subject Property. While the legal entity, either Indonesia or foreign legal entities and foreigners are only allowed to retain and use the land if it is made possible by the relevant regulations. According to the UUPA, foreign legal entities and foreigners are granted the right only in accordance with the provisions of Article 42, 45 and 55 of the UUPA. Foreigners may only have the status of land the right of use (HakPakai) on State land with a term of 25 years extendable up to 25 years (Article 42 UUPA).

The legal basis of ownership arrangements apartment units by foreigners who are domiciled in Indonesia Government Regulation No. 41 Year 1996 regarding ownership of the house Residence or Residents by Foreign Domiciled in Indonesia. In Article 1 PP No. 41 year 1996 stipulated that foreigners domiciled in Indonesia that may have a dwelling is a foreigner whose presence in Indonesia to benefit national development. Thus, in principle, foreigners domiciled in Indonesia are allowed to have a dwelling house, can be a house or in the form of a stand-alone house or flats, units (sarusun) built on the land the right of use (HakPakai). Associated with property ownership by foreigners in essence, there are some provisions, which is:

1. According to the Basic Agrarian Law (UUPA), only IndonesiaCitizens who may hold title to land.
2. Foreigners can inhabit or occupy a house with a lease or right of use. Thus is set in Act No. 1 year 2011. It should be noted that the land law in Indonesia adheres to the principle of horizontal separation that allows the separation of land ownership to the ownership of the objects above or below the ground surface. As a result, the abolition of land rights does not result in the abolishment of rights attached to objects above or below ground.
3. Right to use the above can be given on State land (Tanah Negara), land management rights (Hakpengelolaan) or land Proprietary (HakMilik).
4. As for foreigners, home or place of residence can have is a stand-alone houses built on land the right of use (HakPakai) on state land or on land held under an agreement with holders of land rights, or flats units are built on the field land use rights on state land.
5. Period of use rights according to the UUPA was for 25 years and renewable for 25 years.
6. Differently, for land use rights on the property, the extension can be granted for a period of 25 years and was made in a separate agreement between foreigners with property holders. In addition, it also required that foreigners residing in Indonesia.
7. When the stranger wearing the right holder is no longer domiciled in Indonesia, then he must release or transfer rights to the house or land to others who qualify.

In Article 2 of Government Regulation No. 41 year 1996 about the ownership of the house Residence or Residents by Foreign Domiciled in Indonesia said, that "Foreigners can own a residence or dwelling or apartment house is built on state land by using the status of land the right of use (HakPakai) by agreement with the holder of land rights." Under these provisions, the home ownership and how to obtain the rights to the land by foreigners is as follows:

1. Buy or build a house on the ground with the Right to Use on Stateland or land Right to Use Property Rights.
2. Buy apartment units built on land the right of use (Hak Pakai) on Stateland(Tanah Negara).
3. Buy or build a house on land or rights Proprietary Lease for the building on the basis of a written agreement with the owner of the land rights are concerned.
4. Houses can be built or purchased and apartment units that can be purchased by foreigners to land rights is a house or apartment units that are not included in the classification of simple house or a house is very simple.

Position of regarding foreign ownership of land or buildings in Indonesia in the UUPA set with extreme caution, since the formation of UUPA is to protect the citizens dwelling in Indonesia has land in his own country. If you allow foreigners to buy property so freely, it is not possible local people are no longer able to buy property in their own country because the price is sky high due to massive investments of foreign residents in the property. If it does happen, then we have failed to deliver on the mandate of Article 33, paragraph 3 of the 1945 Constitution. It is not easy for foreigners to obtain land rights in Indonesia. Policy towards foreigners based on the consideration, for the sake of national interests and protect the ownership of Indonesia, also that their presence in Indonesia is only temporary.

To that should be explored further regarding foreign ownership of the apartments and apartment units, and why the land policy to limit foreign ownership of the apartment and the apartment units.

The purpose of research and this paper is to discuss theoretically the foreign ownership restriction on apartments and residential apartment units. So in particular this paper aims to identify, analyze and describe the foreign ownership of the apartment and the flats units and to determine, analyze and describe the land policy of restrictions on foreign ownership of the apartments and flats units in Indonesia.

Research and writing is made and prepared by the method of juridical normative research that uses qualitative analysis, which is by conducting literature study to assess the quality and the establishment of a legal rule or norm is taken from the primary legal materials in the form of legislation that applies in respect of foreign ownership the apartments and apartment units in Indonesia, and secondary legal materials in the form of books, studies and expert opinion related to the foreign ownership restriction on apartments and apartment units. This study approaches the law (Statute approach) is done by reviewing some laws and other regulations, relevant to the provisions, rules and restrictions on foreign ownership of apartments and flats units in Indonesia.

2. Discussion

System Ownership Apartments and Units Flats in Indonesia residential and neighborhood is a basic need that affects the formation of national identity. Along with the development of national economy, where the urban residents in Indonesia is quite large and continues to increase, it takes the availability of residential and neighborhood with limited land available. Therefore, in order to increase the effectiveness and efficiency of land for residential and neighborhood and make effective use of land, especially in densely populated areas, directed at the development of residential and neighborhood development takes precedence entirely on flats.

In the cities where the need for space is very high, the concept of either residential or commercial space in leded become less efficient due to the limited area of land in urban areas. Therefore the concept of residential flats is the right choice. To provide a basis on the construction of flats, the Government issued Act No. 16 of 1985 about Flats ordinance regulating the construction, ownership, and management of residential flats. However, because Act No 16 year 1985 it was no longer in line with the development of the law, the needs of every person and community participation as well as the responsibilities and obligations of the State in the administration of the apartment, the government issued Act No. year 2011 about Flats (hereinafter referred Flats Act) which aim to provide legal certainty to the delivery of flats as the general explanation Flats Act which states that,

"These laws create a firm legal basis related to the implementation of the principle of flats on the basis of prosperity, justice and equality, nationalism, affordability and convenience, efficiency and usefulness, independence, unity, partnership, harmony and balance, integrity, health, sustainability and sustainable, safety, comfort and convenience as well as security and order.

Consistent with the intention of fulfilling the needs housing, general explanation of Flats Act declare, the organization aims flats: to ensure the realization of the flats habitable and affordable, improve efficiency and effectiveness of space utilization, reduce the area and prevent housing and slums, directing the development of urban areas, social and economic needs, empowering the stakeholders, and provide legal certainty in the provision, tenancy, management, and ownership of flats.

According to Article 1 paragraph (1) of Flats Act, flats are:

Storey building constructed in an environment that is divided into parts that are functionally structured, both in horizontal and vertical directions and the units, each of which can be owned and used separately, especially, for shelters that are equipped with the joint, shared objects and common ground. Flats is a concept development with housing that can be populated in a high rise building, where the units can be owned separately constructed horizontally and vertically. Thus the concept of suitable housing for the urban community using the system condominium. condominium or condo is:

Form of housing tenure in which certain parts of real estate (generally room apartment rooms) privately owned while use of and access to facilities as well as the hall, heating systems, elevators, exterior under the laws associated with private ownership and is controlled by the association that describes the property owner the entire section. This title replaces the word "apartments" which refers to the ownership of its own.

Based on these definitions, it points to the condominium buildings consisting of parts, each of which is a unity that can be used or occupied separately. The parts of a union and can be used or occupied separate apartments were called. The term apartment, in Dutch called the Appartement, or Apartement in English, French Apartment is part of the residence /residence of the room, the room / cubicle is also called kamer or vertrek by the Dutch.

Allotment of apartments not only as a residence, it can also be interpreted as a place to do business activities. In this regard, William J. Grange and Thomas C. Woodbury said that, a condominium project involves the separate ownership of residential apartment units and professional office in a private apartment building with each apartment owner units participating in the common elements and co-owning of land and building. Ownership of the apartment is in the possession of the concept of flats units that according to Article 1 paragraph (3) Flats Act declared, that the flats units are hereinafter referred Sarusun is flats units whose sole purpose used separately with the primary function as a residential and have the means connecting to public roads. Ownership of the apartment units known as Strata Title ownership concept, which is, Property Right Upper Unit Flats where the holder the right, a person is also entitled to a portion (proportion) of joint, shared objects and common ground. Rights (ownership) over the joint, shared objects and common land does not refer to the sections or specific location, but in a proportion or percentage of ownership. Strata Title as a title to the flats units granted to owners of flats units to ownership is protected under the law. With Strata Title listed in the form of Certificate of Ownership right over the flats, units would be able to take advantage of the owner for other purposes.

The basic concept underlying the Upper Unit Ownership Flats on The Act of Flats in the theory of the ownership of an object. By law, an object /objects can be owned by one, two or even more, known as shared ownership. In the joint ownership of an object / building, known principally 2 (two) forms of ownership, which is:

2.1. Common Ownership Bound (*Gebondenmede-eigendom*).

On the basis of ownership is the primary bond is a bond prior law was among the owners of the objects with him, such as joint property and inheritance. On this bond, the shared ownership can not freely transfer his rights to another person without the consent of other parties eigenaar cashews.

2.2. Ownership with Free (*Vrijmede-eigendom*).

On this property between co-owners are not legally binding advance, in addition to the right along as the owner of an object. Here are the will to work together to become the owner of an object to be shared. This free form of common ownership which, according to Roman law called the Condominium. Based on this concept formulated type of individual ownership and joint ownership in a single package called a kind of ownership rights to the apartment, with a sense of ownership individual upper unit (unit) housing project,

including also the right of the building together with the buildings, property and land. Property for flats rather than land rights, but related to the soil. The ownership of the flats is individually and separately. The ownership of the flats units comprising the joint ownership rights over what is called the joint, common ground and shared objects are all one inseparable unity. Regarding the ownership of the flats units is emphasized in Article 46 of Flats Act which states: Flats Units ownership rights over the property upon flats units that are separate individuals with rights along the parts together, shared objects, and land together. The right to part with, objects together, and the land together are calculated based on the NPP.

Parts together is part-owned flats are not separately for use with the unit functions with the units of the apartment (Article 1 paragraph (5) Flats Act) such as elevators, stairwells, hallways, roof of the building foundation, the space for the general and so on. While the shared object is an object that is not part of flats, but shared parts are not separate for sharing (Article 1, paragraph (6) Flats Act), places of worship such as buildings, parking lots, sports fields, landscaping, playground children, etc. Objects and buildings are common property that is not separate from all the owners of the apartment units. While the common ground is a plot of land rights or land lease for the building that is used on the basis of common rights are not separate upon standing flats and set limits in terms of building permits (Article 1 paragraph (4) Flats Act). Land does not belong owners of existing apartment units on the ground floor, but it is a common part which is the common right of all owners of the apartment units.

The concept of ownership of the property on a regular house (landed house) in contrast to Strata Title, which is that if someone buys an ordinary house in residential (landed house), ownership is usually in the form of a Certificate of Property Ownership (SHM). SHM ownership by UUPA is always very strong and whose ownership includes buildings on the land, the soil in the yard, the soil underneath it, and what's on top of the building.

Meanwhile, if someone buys the apartment or flats units, then the certificate of his house instead of SHM as usual, but the concept of ownership of Strata Title. Strata Title ownership of the apartment or the flats just above the building unit apartment / flats the only and does not include the entire apartment building outside of the person purchasing the unit, excluding land within the apartment and what lies beneath it, and what is on it. So the concept of Strata Title or separate flats right on several strata (levels), namely the right to the ground, the earth under the ground and the air above it.

On the Unit Ownership Flats declared born since the separation deed registered with the establishment of the land book any apartment units in question. To ensure certainty for the ownership rights of the apartment units, the owner issued a strong proof of ownership of a Certificate of Ownership Flats Upper Unit issued by the Land Office Regency/Municipality as the provisions of Article 47 of Flats Act, which states,

- (1) As a proof of ownership of the land flats units on property rights, right to build, or use rights on state land, or the right to build on the land use rights management rights issued flats units SHM.
- (2) SHM sarusun as referred to in paragraph (1) issued to each person who qualifies as a holder of land rights.
- (3) SHM flats units as referred to in paragraph (1) is an integral part comprising:
 - a) copies of books and letters gauge above the ground right along the land in accordance with the provisions of the legislation;
 - b) image at the level of the floor plan showing the relevant flats owned flats units; and
 - c) pertelaan the extent of the rights to the shared, common objects, and common ground for the question.
- (4) SHM flats unit as referred to in paragraph (1) issued by the district land office / town.
- (5) SHM can be used as collateral flats, units burdened with mortgage debt in accordance with the provisions of legislation.

Certificate of ownership flats, units are hereinafter referred to as SHM flats units accordance with the provisions of Article 1, paragraph (11) Flats Act are: proof of ownership of the apartment units on land property rights, right to build or use rights on state land, and the right to the building or land the rights of use or over management rights.

Based on these definitions, it is with reference to the provisions of

Article 17 of Flats Act, flats can only be built on land property rights, right to build or use rights on state land, and right to build or use rights over management rights. In addition to be built on the land above, according to Article 18 of Flats Act, public housing project and / or special flats can be built with the use of state property / area of land, or waqf land utilization.

Basically what the rights of land to be used for the development rights to the apartment units depending on the legal status of development and organizers to whom the apartment units concerned will be on sale. The rights to the land is as the rights of land set out in the UUPA.

1. Proprietary (Hak Milik)

Ownership is a right hereditary, the strongest and fullest that can be owned by people on the ground. The subject property is a single citizen of Indonesia and certain legal entities specified in the PP. 38 year 1963 which may have rights to land, the state banks, agricultural cooperatives, religious bodies and social bodies.

That because the owner of the apartment and the owner of the apartment units must qualify as a holder of land on which the apartment was set up, the apartment units are built on land with limited property ownership to the individual Indonesian citizens and legal entities who appointed them.

2. Building Utilization Right to build is the right to establish and have a building on land not his own, for a period of 30 years and can be extended another 20 years. The subject is right to build an Indonesian citizen and legal a legal entity established under Indonesian law and domiciled in Indonesia.

3. The right of use Use rights is the right to use and collect the results of the State-controlled land or land owned by another person who gives the authority and duties specified in given decision by the competent authority or in agreement with the landowner who is

not a lease agreement or agreements tillage. Period of 25 years and use rights can be renewed again. Which may have land use rights are:

- a) citizen of Indonesia;
- b) foreign nationals residing in Indonesia;
- c) legal entities established under Indonesian law and domiciled in Indonesia, and
- d) a foreign legal entity which has representatives in Indonesia.

Right to use the most appropriate rights to build a housing project because:

1. The term right to use a relatively long time,
2. candijadikanm guarantee mortgage debt burden,
3. can be owned by anyone, including foreigners who are domiciled in Indonesia.
4. Land management rights There is no article in the UUPA governing the management rights, but in the General Explanation of the UUPA. Management rights are the rights that contains the authority to:

- a. designation and land use planning;
- b. use of land for the purposes of the implementation of their own business;
- c. hand over parts of the land to a third party according to the requirements specified by the Government which holds the rights to it, including in terms of allocation, use, time and finances with the provision that the administration of katas ha of land to third parties concerned by the authorities. Which may be the subject of management rights is a legal entity established under Indonesian law and domiciled in Indonesia which are wholly owned by his government and / or regional institutions and government agencies as well. Because the ownership of the flats units comprising the joint right, then the flats units can only be owned by individuals or legal entities that qualify as holders of land rights are concerned. Therefore are allowed to buy the flats units must also meet the requirements as rights holders together with the relevant land.

5. Foreign ownership and foreign ownership restriction policy on apartments and Flats units Position of of foreigners is regulated by very carefully in the UUPA regarding ownership of land or buildings in Indonesia. Basic formation of UUPA is to protect the citizens dwelling in Indonesia has land in his own country. It is merely an attempt, "to give maximum benefits and prosperity to the people" who have embraced the government in every breath he made the following policy implementation.

So that arrangements, especially regarding foreign ownership of property in Indonesia whose goal is nothing else to attract the interest of foreign investors that would have poured funds in Indonesia are worth considering. But still the principle that the interests of the people of Indonesia in the property sector does not become marginalized. Certainly expected not to happen so the phenomenon of "contracting in their own country" because of foreign domination in the property sector is increasingly widespread. Especially considering the property is an investment instrument that is always assumed would continue to rise in value. Surely the welfare of the citizens of Indonesia that should be an advantage rather than foreigners. This is in line with the principle of nationalism espoused by the National Land Law, which is put the national interest by providing an opportunity for foreigners to master and use the land for business purposes, which is beneficial to the progress and prosperity of the nation and the State (Article 9, Article 1, and Article 9 UUPA). If you allow foreigners to buy property so freely, it is not possible local people are no longer able to buy property in their own country because the price is sky high due to massive investments of foreign residents in the property. If it does happen, then we have failed to deliver on the mandate of Article 33 paragraph (3) of the 1945 Constitution. Article 33 paragraph (3) of the 1945 Constitution mandates that all land in the territory of Indonesia is a gift of God Almighty to the people of Indonesia who have been united into the nation of Indonesia. Land belongs to the nation's mastery of Indonesia is assigned to the State of Republic of Indonesia TO be used for the greatest prosperity of the people of Indonesia. In this regard, every Indonesian citizen is allowed to master and use the land belongs together with any rights provided by the Law of the Land except as otherwise expressly not allowed by the relevant regulations, such as management rights.

Therefore the legal entities, both Indonesia and foreign legal entities may only retain and use the land, if it is expressly allowed by the relevant regulations. Article 30 and 3c the UUPA specify that only a legal entity established by the Indonesian law and domiciled in Indonesia who may become holders of Broking and leasehold. As for the foreign legal entities and foreigners are right as provided for in Article 42, 45 and 55 of the UUPA. Furthermore, Article 9 of the UUPA states that only those citizens of Indonesia, which has made possible entirely by the relationship with the land. This means that the relationship is full control and use the land in question with the right of Property (Article 21 paragraph (1)UUPA). In very special circumstances, strangers may retain and use the land with property rights, right to cultivate and the Building UtilizationRight, and then only 1 (one) year, which is for Indonesia citizen who changed citizenship and foreigners who acquired it because of inheritance abinstestat (Article 21 paragraph (3), subsection 30 (2) and subsection (2) UUPA).

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Foreign policy based on the consideration, in addition to the national interest and protect the ownership of Indonesia, also that their presence in Indonesia is only for a while. For shelter, they can rent a house belonging to Indonesia or if you want to build their own home, it is possible to master and use the land in question with the right lease or the right of use. If you use state land the right of use can be, while the land if the land in question is the property of Indonesia, may be right for a building lease or the right of use (Article 41 and Article 44 UUPA).

It is not easy for foreigners to obtain land rights in Indonesia. Must meet certain conditions first. That need to be considered:

- 1) A foreigner can only have a place to live with the status of land the right of use over State Land,
- 2) Make an agreement with the holder of rights in land created by deed Deed Land Officer;

3) The the right of use it is 25 years old and can be extended for 25 years to make a new covenant, and 4) If a foreigner is no longer domiciled in Indonesia, within a period of one year, must relinquish his rights to others who qualify. If not, house and land controlled by the State and will be auctioned, or the house becomes the property holders of land rights are concerned.

Although foreign ownership is quite difficult, however, based on the description above, in practice, there are several alternative solutions for foreigners to own property or on the flats units, which is:

1. Lease. Practiced by the developer, which foreigners can rent apartments in a very long period of time (long term lease). Basically this concept does not transfer ownership.
2. Lease with the possibility of conversion into a sale and purchase (Convertible Lease). Ownership flats still on the right holder or the developer, only here the possibility of converting agreed tenancy relations into the sale. Can also be referred to as the transfer of property that is not immediate. This does not violate Article 21 paragraph 2 of the UUPA because the owner still.
3. Nominee / Trustee. i.e. the owner of the home unit is a citizen structure. Usually occurs lending money to a foreign national citizens, so that citizen structure home mortgage unit to a foreign national and foreigners are free to take legal actions pursuant to the power of citizens. This is allowed by the Act because the transaction between the foreign creditors to debtors Indonesia with Mortgage insurance common in the business world. This, foreigners use the apartment as if to borrow the name of WNI. However, It can be categorized as well as the smuggling law.

Foreign ownership of property in Indonesia is set in the statutory provisions as follows:

- a) Act No. 1 year 2011 about residential and Neighborhood, Article 52;
- b) Act No. 20 year 2011 about the Flats Units;
- c) Government Regulation (PP) No. 41 Year 1996 about Government Regulation on ownership of the house Residence or Residents by Foreign Domiciled in Indonesia;
- d) State Minister of Agrarian Affairs / Head of National Land Agency No. 7 of 1996 about ownership of the house Residence or Residents by Foreign;
- e) Circular Letter of the State Minister of Agrarian Affairs / Head of National Land Agency No. 110-2871 Year 1996 regarding implementation of Government Regulation Number 41 Year 1996 about ownership of the house Residence or Residents by Foreign Domiciled in Indonesia;
- f) Regulation of the Minister of Agrarian Affairs / Head of National Land Agency No. 8 Year 1996 regarding Amendment State Minister of Agrarian Affairs / Head of National Land Agency No. 7 of 1996 about requirements or Residential Dwelling Ownership by Foreigners;
- g) Circular Letter of the State Minister of Agrarian Affairs / Head of National Land Agency No. 130-105/Sesmen/96 Amendments of 1996 the State Minister of Agrarian Affairs / Head of National Land Agency No. 7 of 1996 about requirements or Residential Dwelling Ownership by Foreigners;
- h) Circular Letter of the State Minister for Housing No. 124/UM0101/M/12/97 On December 11, 1997 On Completeness Requirements ownership of the house Residence or Residents by Foreign.

Regarding foreign ownership of property in Indonesia are set out in Government Regulation (PP) No. 41 year 1996 about ownership of the house Residence or Residents by Foreign Domiciled in Indonesia. Under Article 1 of Regulation No. 41 year 1996, foreigners domiciled in Indonesia can have a house for a residence or dwelling with the base of certain land rights.

Foreigners domiciled in Indonesia are foreigners whose presence in Indonesia to benefit national development, that is, those who own and maintain the economic interests in Indonesia to implement the investment to have a dwelling house or dwelling. Describe the meaning of living in a prudent, as follows:

- a) In concrete, not necessarily the same as the residence or domicile. In the economic field, for example, foreigners may have interests that must be maintained without having to wait physically, let alone for a long time and continuously.
- b) Advances in transportation and communication technologies allow people to maintain interest in other countries without having to wait alone.
- c) Sometimes they just come at regular intervals. In such circumstances, what they need is a residence or residential facility on a regular basis if it should come regularly to administer or maintain its interests.

According to the Circular Letter of the Minister of Agrarian Affairs / Head of BPN No. 110-2871 dated October 8, 1986 on the implementation of PP.41/1996 on ownership of the house Residence or Residents by Foreign, "Foreigners who can own a house in Indonesia are foreigners whose presence in Indonesia to benefit the national development, which owns and maintains economic interests in Indonesia with the investment to have a residence or dwelling house in Indonesia."

Terms of foreigners whose presence in Indonesia to benefit national development meant that the ownership of a residence or dwelling house to foreigners should not be viewed solely from the interest of the foreign national, but rather on its presence in Indonesia have to provide benefits or contributions to the development nationwide.

Foreigners in terms of its presence in Indonesia can be divided into 2 (two) categories, which is:

a. The foreign who resides permanently in Indonesia

(Indonesia's population). To have a house, he must show permanent residence permit.

b. Foreigners who do not live permanently in Indonesia but only from time to time in Indonesia. To have a house, he must show license or permission requests other immigration-shaped mark that is applied to the passport or other immigration documents held by the foreign national.

In the UUPA, a foreigner may only have the status of land The Rights of Use on State land with a term of 25 years extendable up to 25 years (Article 42UUPA). Use rights according to Article 41 of the UUPA is:

the right to use and / or collect the results of the land directly controlled by the State or land owned by others, who gave the authority or obligation specified in the decision by the competent official gift giving, or in agreement with the owner of the land, which is not a lease agreement or processing agreements, provided that all things not contrary to the spirit and provisions of this law. Government Regulation No. 41 year 1996 regarding the ownership of a residence or dwelling house by a stranger who is domiciled in Indonesia, Article 2 states that, "A foreigner can own a residence or dwelling or apartment house is built on state land by using land the right of use based on status agreement with the holder of land rights. " Under these provisions, then the residence or dwelling house which can be owned by foreigners is:

1. Stand-alone homes are built on plots of land:

- a. The Rights of Use (HakPakai) on State land;
- b. Controlled by agreement with the holder of land rights. The agreement concluded in writing between the foreign national with katas ha of landholders. The agreement must be a PPAT deed. The agreement shall be recorded in a book on the ground and the Certificate of Rights to the land in question. The agreement is made within an agreed period of time but not more than 25 (twenty five) years and may be extended no more than 25(twenty-five years) (Articles 3, 4 and 5 stars. 41 of 1996).

2. Apartment units are built on areas of land use rights on stateland.Ownership and manner of acquisition of land by foreigners under Article 2of Regulation of the Minister of Agrarian Affairs / Head of National LandAgency No. 7 of 1996 regarding Ownership Requirements Residential or Residential by jo Alien Circular Letter of the Minister of Agrarian Affairs/ Head of BPN No.. 110-2871 dated October 8, 1996 on the implementation ofPP. 41/1996 point 3, is conducted by:

- a. Buy or build a house on the land with the right Use on State land orland rights Use Property Rights;
- b. Buying a unit of residential flats built on land Use Rights on Stateland;
- c. Buy or build a house on land owned the rights or the right hire for the building on the basis of a written agreement with the owner of the land in question

Ownership is still limited to one house. The purpose of this restriction is to keep the ownership opportunity is not deviated from its purpose, which is merely providing a reasonable support for the holding of foreign business people in Indonesia as stipulated in Article 1 of Regulation No.41 of 1996 Circular Letter of the Minister of Agrarian jo / Head of BPNNo.. 110-2871 dated October 8, 1996 on the implementation of PP. 41/1996, that the house can be owned by foreigners is only one fruit. To ensure this is for foreigners who would buy a house in Indonesia should be asked to make a statement that the person concerned has no home or shelter homes in Indonesia at the time of committing the law to buy a house or apartment units.

Article 2, paragraph (2) Regulation of the Minister of Agrarian Affairs /Head of National Land Agency No. 7 In 1996, jo point 4 Circular of the Minister of Agrarian Affairs / Head of BPN No.. 110-2871 dated October 8,1996 on the implementation of PP. 41/1996 also provides restrictions on the residence or dwelling that can be owned by foreigners, which is limited only to homes that are not classified as "simple home" or "very modest home".

Use rights can be granted to foreigners because it is possible given the legal construction of horizontal separation principle adopted by the national land law, namely the separate ownership of buildings with land tenure. With the construction of this law, it means that the principle owner of the building with land tenure.

However, still limited in terms of foreigners "domiciled" in Indonesia who is the holder of KIM that meets certain requirements (eg qualified to benefit economically or professional qualifications as stipulated in the Circular Letter of the Minister of Agrarian Affairs / Head of BPN No.110-2871 dated October 8, 1996 on the implementation of PP. 41/1996 on Housing Home Ownership or occupancy by the foreign and not just foreigners with the status of residence / gevestigd).

With the principle of horizontal separation, it is possible for foreigners to have apartments or apartment units, but is limited to apartments or flats that stood on the right of use as stipulated in Article 2 of Regulation No. 41 of 1996. Thus, it is not possible for foreigners to own apartments or flats built on Building Utilization Right or Property Rights.

Though standing on Flats Use Rights on State land under PP. 40, 1996 on right to cultivate, Building Utilization Right and Land the Rights on Use, have the same characteristics with flats above that stands Broking or Property, which has existence and good prospects in the future, and may bean alternative in investment in the property business.

This is because the rights to the apartment units of a personal nature that also includes the rights to the building together, shared objects and common ground is an inseparable unity with the apartment units are concerned. In this case the owner of the apartment units must have the qualifications to serve as joint holders of land rights. This principle applies to flats or apartments are used as residential and non residential.

Based on these reasons, then foreigners can only own apartments or flats on land the right of use.

That basically foreign ownership for flats or apartments above ground HGBis not possible because :

1. HGB on the legal construction, the building does not allow a person hasjust become the holder of the rights to the land.Because of the HGB, HGBholder of the holder of rights inland and buildings. In other words,rights to land and buildings are on one hand or do not separate.

2. Horizontal separation principle does not apply in the HGB.

3. HGB transition must be authorized (Regulation of the

Minister of Agrarian No. 14 year 1960 jo regulations the Director General of AgrariaNo. 4 year 1968 and last Permendagri No. SK/DDA/1970) which in essence requires the applicant to provide information about the amount of land or a house that already belongs his wife and children who are dependents to determine whether the petition is granted or not. This regulation aims to conduct

oversight of the transfer of land rights in order to avoid violation of the provisions of the UUPA, for example, requirements relating to the subject of land rights.

Therefore, if title to the flats or apartments are owned by foreigners are standing on the ground Broking and Property Rights or may have property rights as desired by stakeholders and the Government, then it would be contrary to the principle of home ownership flats and principle of Article 33 paragraph (3) of the 1945 Constitution and UUPA. Thus the permissibility of foreigners have apartment units just above the right of use is the only possibility that can be legally justified pursuant to Article 42 of the UUPA.

3. Conclusion

Policy restrictions on foreigners in possession of the property in Indonesia is based on considerations of national interest and protect the ownership of the nation of Indonesia as the mandate of Article 33 paragraph(3) of the 1945 Constitution and the principle of nationality is held by the UUPA. Therefore, based on Government Regulation (PP) No. 41 year 1996, foreigners domiciled in Indonesia can have a house for a residence or dwelling on the land the Right of Use.

Foreigners are restricted to foreigners "domiciled" in Indonesia who is the holder of KIM that meet certain conditions, namely the presence in Indonesia to benefit the national development, which owns and maintains economic interests in Indonesia with the investment to own homes or occupancy in Indonesia. So that ownership should not be viewed solely from the foreign national interests and ownership is restricted to only one house, where the house is not classified as "simple home" or "very modest home". Foreign ownership of the apartment or apartment units that stood on the land use rights is done by: Buy or build a house on the land with the right. Use on State land or land rights Use Property, Buying residential apartment units are built on land the right of Use on state land, or buy or build a house on land owned the rights or the right hire for the building on the basis of a written agreement with the owner of the land rights are concerned.

The Right of Use can be granted to foreigners because it is possible given the legal construction of horizontal separation principle adopted by the national land laws. So based on these principles is not possible for foreigners to own apartments or flats built on land Broking or Property Rights.

4. References

- i. Indonesia. Act about Agrarian Basic Regulation, Act No. 5 year 1960, L.N.No. 104, TLN. No. 1125.
- _____. Act about Act about residential and Neighborhood, Act no. 1 year 2011, LN No. 7, No.TLN. 5188.
- _____. Government Regulation about leasehold, Building Utilization Right and the rights of Use, PP. 40 year 1996.
- _____. Government Regulation about Government Regulation on ownership of the house Residence or Residents by Foreign Domiciled in Indonesia. PP No.41 Year 1996.
- ii. _____. State Minister of Agrarian Affairs / Head of National Land Agency about ownership of the house Residence or Residents by Foreign, No. 7 of 1996;
- iii. _____. Circular Letter of the State Minister of Agrarian Affairs / Head of National Land Agency about implementation of Government Regulation Number 41 Year 1996 about ownership of the house Residence or Residents by Foreign Domiciled in Indonesia, No. 110-2871 Year 1996;
- iv. _____. Regulation of the Minister of Agrarian Affairs / Head of National Land Agency about Amendment State Minister of Agrarian Affairs / Head of National Land Agency No. 7 of 1996 about requirements or Residential Dwelling Ownership by Foreigners, No. 8 Year 1996;
- v. _____. Circular Letter of the State Minister of Agrarian Affairs / Head of National Land Agency No. 130-105/Sesmen/96 Amendments year 1996 the State Minister of Agrarian Affairs / Head of National Land Agency No. 7 of 1996 about requirements or Residential Dwelling Ownership by Foreigners;
- _____. Circular Letter of the State Minister for Housing On Completeness Requirements ownership of the house Residence or Residents by Foreign, No. 124/UM0101/M/12/97 On December 11, 1997.
- vi. Adrian Sutedi, Law Flats & Apartments, First Edition, Jakarta Sinar Graphic, November 2010.
- vii. Arie S. Hutagalung, Condominium: The problem, Revised Edition, First Edition, Jakarta : Publishers University of Indonesia, 2007.
- viii. Harsono, Boedi, Towards Completion of the National Land Law in Connection with TAP MPR IX/MPR/2001. Revised edition, Jakarta: Trisakti University, May 2003
- ix. Purbandari, Review of Top Legal Ownership Flats for Foreigners in Indonesia in the Context of Globalization, Research Report, Jakarta: MpuTantular University Law School, 2009.
- Maria S.W. Sumardjono, Land Policy: Between Regulation and Implementation, 6th Edition, Jakarta : Compass Books, June 2009.
- x. Handy Samot, Summary of State Minister of Agrarian Affairs / Head of National Land Agency No. 7 Year 1996 regarding requirements Housing Housing Occupancy Or By Foreigners. Property laws, accessed 13/03/2012, at 5:57.
- xi. Investor Daily Indonesia, Foreign Property Ownership Clauses Loading of Land Bill, dated January 17, 2011, accessed on 03/13/2012, at 06:13.
- xii. Tjahja Diredja Gunawan, Already Are We Ready if the apartment has a Stranger?, Kompas.com, Friday May 28, 2010, accessed on 13/3/2012, 12:00.
- xiii. Viva News.Com. Foreigners Allowed Rental Property 90 Year: Revisions to the property rights of foreign ownership in Indonesia immediately issued later this year 29 September 2010, accessed tanggal 13/03/2012 : 12.00.