

CHAPTER I INTRODUCTION

A. Research Background

Indonesia as one of the Southeast Asia's archipelago nation, is a nation that has a large and wide area of land mass. The total area of Indonesia according to the concept of archipelago is 1.919.440 km² wide and stretch along as long as 3.977 miles.¹ The vast area is a treasure and proof of nation's richness that needs to be protected and maintained. This vast region is one of the supporting factors of life that is very important to every citizen of Indonesia. Almost all aspects of life of the Indonesian population depends on the availability of land. Therefore, the land as one of the nation's treasure and wealth shall be treated appropriately and with proper and appropriate planning.

One of the factors that increase the need for the land itself is the increase growth of the Indonesian Population. The projection shows that the population of Indonesia over the next twenty five years will continuously increase from 238,5 million in 2010 up to 305,6 million in 2035.² The fast growth of the Indonesian population will lead to the increase of the need of land to support the Indonesian population. To support both in terms of residence and livelihood. The increasing need for the land by Indonesian population, unfortunately is not followed by the increasing amount of land

¹Kedutaan Besar Republik Indonesia Kuala Lumpur, "Tentang Indonesia", <http://www.kbrikualalumpur.org/index.php/tentang-kbri/tentang-indonesia>, accessed on 27 July 2016.

²Badan Perencanaan Pembangunan Nasional dan Badan Pusat Statistik, *Proyeksi Penduduk Indonesia*, (Jakarta: Badan Pusat Statistik, 2013), pg.23.

area available in Indonesia. The total land area of Indonesia is fixed (static) by nature and does not increase. Ironically it even tends to diminish (decrease) either because of natural phenomenon or due to human activities.

The land and house as a residence is a part of human rights, it is mentioned in the main body of the Constitution of the Republic of Indonesia (Undang-Undang Dasar Republik Indonesia 1945), Article 28H paragraph (1) which reads in Indonesian:

“Setiap Orang berhak hidup sejahtera lahir dan batin, bertempat tinggal dan mendapatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan”.

Which if the Writer translates literally in English, the provisions above will says:

“Everyone has the right to live in prosperity, physically and spiritually, reside and earn a good and healthy living environment and the right to receive medical care”.

The need for the house as a residence or dwelling in urban areas is very large due to the large population that is concentrated in a certain area. This large population, whether it is derived from the natural growth such as birth or through human activities, such as urbanization. During this time all along, to meet the needs of home as a residential area for Indonesian is through the construction of residential area horizontally, for example the construction of landed residential complex. This method is considered as less effective and cannot be carried out continuously, because the amount of land available for

developing houses and residential area horizontally is very limited. To overcome this problem, a solution that arises is the use of land with adequate planning, one of which is by the way of constructing vertical residences, such as flats, apartement or condominium. Siswono Judohusodo explained that the building of flats in big cities is a trend of the future that can not be avoided and thus need to be promoted and need to be adjusted to the existing culture in Indonesian society.³

The construction of flats in Indonesia is actually a common thing. Flats as defined by Indonesian Act Number 20 of 2011 regarding Flats is a multi-storey building built in an environment that is divided into sections structured functionally, either in horizontal or vertical direction and the units that each can be owned and used separately, especially for the residential places that is equipped by common portion (*bagian bersama*), common goods (*benda bersama*) and common land (*tanah bersama*). The definition above is the Writer's translation literally, which in the original Indonesia version says:

“Rumah Susun adalah bangunan gedung bertingkat yang dibangun dalam suatu lingkungan yang terbagi dalam bagian-bagian yang distrukturkan secara fungsional, baik dalam arah horizontal maupun vertikal dan merupakan satuan-satuan yang masing-masing dapat dimiliki dan digunakan secara terpisah, terutama untuk tempat hunian

³Siswono Judohusodo, *Rumah untuk Seluruh Rakyat*, (Jakarta: Unit Percetakan Bharakerta, 1991), pg. 27.

yang dilengkapi dengan bagian bersama, benda bersama dan tanah bersama”.⁴

For the region of Southeast Asia, the nation that is quite successful in building, developing and managing housing projects (flats) is Singapore. This proves is due to the many successful development and construction of housing projects (flats) in Singapore. Just like Indonesia, Singapore also experience population growth every year. The percentage of population growth in Singapore in the year of 2015 was 1,2%.⁵ This rate of population growth of Singapore and the amount of foreigner that enter into Singapore is actually one of the factors driving the development and construction of flats in that nation. The high number of average population growth is due to many of foreign nationals that come into Singapore for work and study purposes.

Singapore is a nation located in the Southeast Asia region with the total of land area covering an area of 719,1 km² in 2015, far wider than in 1995, which at that time was only an area of 647,5 km².⁶ This increase in the amount of land area is caused by Singaporean government's efforts to tackle the lack of land area of Singapore. One way to achieve this is through the reclamation of the former water area into land mass around the island of Singapore. The total population of Singapore is as much as 5,54 million.⁷

⁴Indonesia, *Undang-Undang Nomor 20 Tahun 2011 tentang Rumah Susun*, UU No. 20 Tahun 2011, LN No. 108 Tahun 2011, TLN No. 5252, Ps. 1.

⁵Departemen of Statistics, Ministry of Trade & Industry, “*Population Trends 2015*”, https://www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/population_and_population_structure/population2015.pdf, downloaded on 10 August 2016.

⁶Singapore Land Authority, “*Total Land Area of Singapore*”, <https://data.gov.sg/dataset/total-land-area-of-singapore/resource/f4bbfac9-c3ed-4f71-9b9a-238517b214ef>, accessed on 10 August 2016.

⁷Departemen of Statistics, Ministry of Trade & Industry, *op. cit.*

Singapore is a nation with quite rapid economic growth, supported by the growth in the industrial sector, banking, international trade, biotechnology, energy and infrastructure. With the sufficient amount of population and labour, this then pushed a growing number of Singaporean's need for homes.

This need is then become the reason for the development and construction of flats and housing projects in Singapore. The growth in the economic sector is also the reasons that pushed the Singaporean ability to be a more consumptive society and thus investing in the housing sector in Singapore.

Singapore restricts the ownership of land and buildings by foreigner into several categories.⁸ One of the driving factors that proves that the housing sector in Singapore is promising and growing rapidly is the rise in housing prices in Singapore within 10 (ten) years, sitting in the sixth highest in Asia with a percentage increase of 63,87%.⁹ This is certainly not only encouraging the purchase among the people of Singapore, but also purchases by foreign nationals (particular Indonesian).

Purchase of properties by the Indonesian are not only driven by the factor of necessity, but also driven by speculative factors. Prospects and development in property investments in Indonesia according to one association, Real Estate Indonesia (REI), can still continue to increase, this increase could even reach 20%-30%. In additional to having a small risk, to make property investments prospect in Indonesia does not require any special

⁸Singapore Expats, "Eligibility to Buy Private Property", <http://www.singaporeexpats.com/guides-for-expats/procedure-for-purchase.htm>, accessed on 10 August 2016.

⁹Global Property Guide, "House Price Changes, 10 Years (%) Singapore Compared to Continent?", <http://www.globalpropertyguide.com/Asia/Singapore/price-change-10-years>, accessed on 10 August 2016.

knowledge to understand, unlike other investment instruments. This can be seen from the history of the development of existing properties in Indonesia, so far there is no developer that offers a reduction in property prices, especially houses.¹⁰

Property development especially in the field of flats and housing projects have also been regulated by the government through legislation on the development of residential quality and policy-making through regulation regarding flats and apartments. Some of the legislation relating to the development and construction of flats are:

1. Indonesian Act Number 20 of 2011 regarding Flats/Housing Projects

(Undang-Undang Nomor 20 Tahun 2011 tentang Rumah Susun),

2. Presidential Regulation of the Republic of Indonesia Number 4 of 1988 regarding Flats/Housing Projects *(Peraturan Pemerintah Nomor 4 Tahun*

1988 tentang Rumah Susun),

3. Regulation of the Head of the National Land Agency Number 2 of 1989 regarding Forms and Procedures for Filling and Registration of Flats

Separation Deed (Peraturan Kepala Badan Pertanahan Nasional Nomor 2 Tahun 1989 tentang Bentuk dan Tata Cara Pengisian serta Pendaftaran Akta Pemisahan Rumah Susun),

4. Regulation of the Head of the National Land Agency Number 4 of 1989 regarding Forms and Procedure for Issuance of Certificate of Land and Certificate of Flat Ownership *(Peraturan Kepala Badan Pertanahan*

¹⁰Paramount Land, "Investasi Properti di Indonesia", <http://www.paramount-land.com/investasi-properti-di-indonesia>, accessed on 05 August 2016.

Nasional Nomor 4 Tahun 1989 tentang Bentuk dan Tata Cara Pembuatan Buku Tanah serta Penerbitan Sertipikat Hak Milik atas Satuan Rumah Susun),

5. Regulation of the Minister of Home Affairs Number 3 of 1992 regarding *(Peraturan Menteri Dalam Negeri Nomor 3 Tahun 1992 tentang Guidelines for making Regional Regulation on Flats),*

6. Regulation of the Minister of Public Works Number 60/PRT/1992 regarding Technical Requirements for Construction of Flats *(Peraturan Menteri Pekerjaan Umum Nomor 60/PRT/1992 tentang Persyaratan Teknis Pembangunan Rumah Susun).*

After the properties were built, it will then be sold to the public. Purchase of property products are not only limited to it's citizen only, but also open for foreign nationals with some initial requirements. The purchase of property products will not always be paid in full, however settlements of purchase can be paid through credits/loan from banking institution. Then what if the purchase of property products, especially the purchase of apartment unit or flat by foreign nationals using the credit/loan system, where the unit of apartment or flat said above also serves as a collateral for that loan?

Based on what mentioned above, it can be seen that the trend of rising public interest especially in the property products, including but not limited to flats, not only occurs in other countries, but also in Indonesia. This is due to factor of a limited space of land area whilst the population growth is high and still increasing, resulting in an increase in the needs of housing and residential

area for the population to stay. In addition to the needs factor, people also tend to buy property products due to speculative reasons. The tendency of the increasing demand in property products and limited land area, especially in urban areas became the main reason of development and construction of flats in both Indonesia and Singapore.

Therefore, it is necessary and important to know about the legal provisions that is governing the flats units be as a collateral on credit purchases by foreign nationals in Indonesia and Singapore. In connection with the above matters, the Writer is interested to study and research more on the imposition of flat unit (strata title) as a collateral on credit purchases by foreign nationals in Indonesia and Singapore. therefore, the Writer is interested in doing this research by lifting the title **“Analytical Approach to the Implementation of Mortgage Law on Flat Owned by Foreigner in Indonesia and Singapore”**.

B. Research Questions

From the research backgrounds that have been described above, the problems and questions that can be formulated in this research are:

1. How is the law in Indonesia and Singapore that governs about the acquiring and rights a foreigner has on a flat?
2. How is the method to charge a flat as loan collateral that is owned by foreigner in Indonesia and Singapore?

3. What are the advantages and disadvantages in ownership and the charge of flat by foreigner in Indonesia and Singapore?

C. Research Purposes and Benefits

Basically, based on the formulation of the problems and questions mentioned above, the purpose of this study and research is to answer the research questions and problems, namely to:

1. Search for and analyze arrangements regarding the law in Indonesia and Singapore that governs about the acquiring and rights a foreigner has on a flat.
2. Search for and analyze arrangements regarding the method to charge a flat as loan collateral that is owned by foreigner in Indonesia and Singapore.
3. Search for and analyze arrangements regarding the advantages and disadvantages in ownership and the charge of flat by foreigner in Indonesia and Singapore.

The Writer hopes that in the future with this study, can provide the following benefits:

1. Theoretical Benefits

a. Academics

This research can be used as a reference for academics, especially for those doing research on the charge of flat/strata title as loan collateral for purchase by foreigners in Indonesia and Singapore.

This research is also a study in the field of agrarian and land law,

particularly on the development and management of flats (strata title) units as well as to develop an advanced research on the comparative law basis.

Through this study, the Writer expected eventually to provide benefits in the development of knowledge in the field of law science in general and land and property law in particular..

b. The Writer

This research is expected to benefit the Writer himself to be able to know more about the agrarian law, strata title and law on collateral and security guarantees, in particular the encumbrance of strata title as loan collateral for purchase by foreign nationals.

c. Knowledge and Repertoire to Library Materials

This research is expected to be useful and be an additional repertoire to library material on the law science in the faculty of law of *Universitas Internasional Batam*.

2. Practical Benefits

a. Citizen of Indonesia and Singapore

The benefits for the citizen of Indonesia and Singapore is to increase knowledge and information about the process of the encumbrance of strata title as loan collateral for purchase by foreign nationals in Indonesia and Singapore. Through an understanding of the process of the charge of flat/strata title as loan collateral for

purchase by foreign nationals, it is expected to provide legal certainty for the citizens of Indonesia and Singapore.

b. Developer (company)

For developers which will develop, build and manage the flats and strata title both in Indonesia and Singapore, to know and understand the applicable laws and regulations concerning the development, management and ownership status on the strata title and the encumbrance as a loan collateral for purchase, it is expected to provide benefits in the form of an understanding of the laws and regulations that apply to the development, management and charge/encumbrance of flat/strata title as a loan collateral for purchase in Indonesia and Singapore.

c. Indonesian Government

For the Indonesian government, especially the legislature that is authorized to make laws and legislation, this research is expected to give contribution of ideas in the development of law in Indonesia, especially land law and flat/strata title.