

Regarding the charge of flat as a security interest in Indonesia and Singapore, although the law relating to encumbrance right in Indonesia and mortgage in Singapore is relatively well-established, particularly with Singapore's regard to the protection of the mortgagor's right (by implementing the English's court "mortgagor's equity of redemption"). The judicial trend in the United Kingdom and Singapore appears to be leaning towards upholding the mortgagee's right as creditor with the benefit of legal advice than the mortgagor. Unlike in Indonesia where, at least, seems to have implemented a more protective scheme by prescribing detailed steps to be taken by mortgagees who risk losing the loan given. However this Indonesian position has not been implemented in Singapore's laws. It remain to be seen how the Indonesian law and courts will proceed in their efforts to maintain the delicate balance between protecting the principle of freedom of contract and the need to interfere with that freedom, in order to protect the weaker party.

3. The Advantages and Disadvantages in Ownership and the Charge of Flat by Foreigner in Indonesia and Singapore

From the researching findings, the implementation of ownership law and mortgage law in Indonesia and Singapore causes several differentiation in techniques and laws. These then result to the advantages and disadvantages in Indonesia and Singapore regarding the ownership and mortgage rights/encumbrance rights. The advantages and disadvantages are:

a. Advantages in ownership and charge of flat by foreigner in

Indonesia:

- 1) A foreigner can directly buy a property in Indonesia (including flat) as long as he/she meets the requirements provided by the laws and regulations of Indonesia.
- 2) Legal certainty for foreigner in Indonesia because of the system implemented in Indonesia which making forgery, multi documents and theft of data is nearly impossible.
- 3) More protection for both parties (especially the debtor)

b. Disadvantages in ownership and charge of flat by foreigner in

Indonesia:

- 1) Many limitation to the freedom of choice for foreigner who wishes to buy property (especially flat) in Indonesia.
- 2) Harder procedure and process for receiving loan.
- 3) Additional procedure for foreigner who owns a flat with a right to use title above the Land Management Right (*Hak Pengelolaan*), which is approval from the bearer of the Land Management Right.
- 4) If the foreigner (debtor) defaults, the creditor's remedy are only limited to foreclosure using the *parate executie* either with or without court's order or selling the collateral (charged with encumbrance right) by parties.

c. Advantages in ownership and charge of flat by foreigner in

Singapore:

- 1) More freedom of choice for the foreigner to purchase flats in Singapore.
- 2) Banks or financing institution can have no problem creating a security interest if the loan is granted over the flat.
- 3) If the debtor defaults, then the creditor (mortgagee) have more freedom of choices in the remedies.
- 4) The creditor (mortgagee) can immediately exercise its power of sale rights, under its own discretion, once the debtor cannot repay the loan and have been served with a notice regarding the conditions or there has been a breach in the provision of the mortgage deed.

d. Disadvantages in ownership and charge of flat by foreigner in

Singapore:

- 1) The process of sale and conveyance takes up to 3 (three) months period.
- 2) The deed system in the Registry of Deed is prone to the risk of forgery, multi deeds and theft of deeds.
- 3) The debtor has no protection against the creditor will if the debtor is default, because the creditor/mortgagee's power of sale rights is solely the discretion of the creditor/mortgagee to effect the power of sale.

B. Limitations

In writing and researching the topic raised in this undergraduate final project, the Writer faces some limitations, amongst others are:

1. The limitations on the source of books, where the books that explain and describe in details the laws and process of owning and charging flat as a security interest, especially which process is conducted by foreigner in both Indonesia and Singapore is hard to find. Not many books that explain the topic raised by the Writer. Books found is often only explain the conditions in general, thus the information obtained is not detailed and enough. The said condition is some of the limitation faced by the Writer in researching this topic.
2. Limitation in the amount of time, where the topic raised in this undergraduate final project is done through legal analysis approach in two countries, Indonesia and Singapore. The analysis approach is done to the laws and regulations imposed in Indonesia and Singapore. The Writer has to study the prevailing laws and regulations of Indonesia and Singapore regarding the topic raised in this undergraduate final project in the limited amount of time given.
3. The difference in the law system the Writer studies. The Writer commonly studies the laws that implemented the Continental European law system (or the civil law system), law system which is implemented in Indonesia.

While the law system implemented in Singapore is the Anglo Saxon law

system (or the common law system), the law system which is commonly implemented in commonwealth nations. By analyzing two different law system and its derivatives, this difference in the law system implemented brings certain challenge in finishing this research and undergraduate final project.

4. The difference in the language also bring another challenge for the Writer to understand the literature provided. Most of the literature regarding the mortgage law in Singapore are written in English with several terms and terminology which is not familiar for the Writer. Thus this makes it hard for the Writer to comprehend the meaning of the written words in the said literature.

C. Recommendations

Based on the result of research conducted by the Writer, the Writer gives out some recommendations regarding the title of this research, the recommendations are as follows:

1. The provision of Article 2 paragraph (1) of the Regulation of the Minister of Agrarian and Spatial/Head of the National Land Agency Number 13 of 2016 regarding Procedure of Giving, Release and Transfer of Ownership of Residential Dwelling House by Foreigner Person Domiciled in Indonesia, which states that the purchase of property by foreigner in Indonesia must be against a newly built property and not second handed property. By the Writer's opinion,

the alternatives/choices available for purchase by foreigner according to the prevailing Indonesian laws and regulations is quite limited. This is because not all the flats built, are built on the rights of use title. This limits the available options. Whereas the flats must be newly built and bought directly from the developer. The Writer recommends the reconsideration of the provision regarding the purchase by foreigner which purchase must be against a newly built and bought directly from the developers. This is because, in practice, the available choices for foreigner is already very limited. The provision on the minimum purchase price by the Indonesian government should be enough to limit the available options.

2. The Indonesian government should implement the needs for permit/approval before a foreigner buys property in Indonesia. The Writer also recommends the establishment of a specialized board/agency, as a one-stop station for all the information needed by the foreigner. This specialized board/agency's main task is for the assistance, assessments and issuance of permits. Because of the implementation of minimum purchase price in Indonesia for foreigner, the said foreigner is definitely considering a lot of thing into account, before buying a flat in Indonesia. This is where this specialized government board/agency takes an important role. This board/agency gives legal assistance to every foreigner regarding all the information, encumbrance rights/mortgage, rights, obligations and

prerequisite needed before buying flats or other properties. The assessment function is where this board/agency assesses the financial situation, the needs and prerequisite needed for the foreigner before buying a flat. This board can also recommend the available options, suitable for the foreigner based on the result of the assessments. After all of the steps have been cleared, then this board/agency can issue an approval/permit for the foreigner to purchase a flat/other properties.

This permit is then taken into account, as the bearer of the permit has been checked by the government thoroughly; this brings an impression that the Indonesian government is also protecting their rights, even though they are a foreigner. Thus a foreigner bearing this permit can feel safe to purchase a designated property despite the expensive price tag.

3. The Writer recommends an additional alternative beside the alternatives for foreclosure, as mentioned in the Article 20 of the Act Number 4 of 1996 regarding Encumbrance Right Over Land and Land Related Objects. The said alternative is the rights to take into possession of the encumbrance object, not to sell the security interest, but just to manage and receive income out of it. This is considered, in case of the selling price is unable to fetch a higher price needed due to the hard economic condition in Indonesia. This step is taken to protect the rights of debtor (in this case foreigner who owns a flat, which acts as a security interest for loan) in condition

where it is almost unfavorable for foreclosure. According to the Writer, this the rights to take into possession can be exercised/implemented by the creditor, only after the creditor receive an order/decision from the Head of District Court of Law.

4. Lastly, the Writer recommends that the Indonesian government to work on the needed derived and technical laws regarding the ownership and charge of a flat. After the laws above are enacted, then the government must socializing this laws and legislations to the public, especially for banking institutions.