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LEGAL SATISFACTION SUSPENDED BY LAND DEED OFFICIAL THAT DOES NOT MEET THE MINIMUM PRICE STANDARD FOR PURCHASING APARTMENT FOR FOREIGNER IN INDONESIA

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Abstract

The aims of this study are to investigate the legal certainty of the Land Deed Official that does not meet the minimum price standard on purchasing apartment units for foreigners domiciled in Indonesia and to examine the consequences of the Land Deed Official that does not meet the minimum price standard on purchasing flats for foreigners. This study is normative legal research that uses a statutory approach and a legal concept analysis approach. Legal materials are collected using the snowball method and analyzed systematically with legal discovery techniques. The results showed that the legal certainty of the Land Deed Official that does not meet the minimum price standard in purchasing flats for foreigners according to the provisions of Article 11 of the Republic of Indonesia Government Regulation Number 103 Year 2015 on Housing Ownership or Occupancy by Foreigners Occupied in Indonesia. the law and the legal consequences of the Land Deed Official which does not meet the minimum price standard for the purchase of flats for foreigners are null and void, because they are contrary to the legal objective conditions of the agreement stipulated in the provisions of Article 1320 of the Civil Code about a particular measure that is clear, required and justified by law.

Keywords: Foreigners in Indonesia, Land Deed Official, Legal Satisfaction, Minimum Price Standard.

1. INTRODUCTION

Land as a basic right of every person which its existence is guaranteed in the 1945 Constitution of the Republic of Indonesia. Further affirmation regarding this matter is manifested by the issuance of Law No. 11/2005 concerning Ratification of the International Covenant on Economic, Social, and Cultural Rights (International Covenant on Economic, Social and Cultural Rights). The meaning of land as a basic right of every person is contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights which is then ratified into Law Number 11 of 2005 and stated that everyone has the right to an adequate standard of living. The right to an adequate standard of living in this case the author is of the view that the State recognizes the right of everyone to an adequate standard of living for him and his family, including food, clothing, housing, and for the improvement of living conditions on an ongoing basis. This is

further stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that the earth, water and space, as well as the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. Based on these provisions, Law Number 5 of 1960 concerning Basic Agrarian Rules (hereinafter referred to as UUPA) was issued. Article 19 of the BAL is intended for the government to carry out Land Registration throughout the territory of the Republic of Indonesia with the aim of providing legal certainty guarantees to legal subjects. It supported by (Asyhari, 1992) revealed that the government needs to look back at the existence of the UUPA as a 'pillar' for all regulations relating to land, water and space issues, as well as the natural wealth in it, so that the implementation of the UUPA becomes effective. Human resources are increasing while the land area remains, resulting in land having a high economic value. Individuals, Legal Entities, Government

Agencies, including Regional Governments also need land to carry out their duties and for other interests such as the development of new residential areas, provision of facilities to improve the welfare of the community and so on. Preservation of the environment is also important, so that later land which is part of the assets of the Indonesian people can be passed on to the next generation of the nation in the future. The role of the State through the government is needed to provide legal certainty. Land law in Indonesia recognizes an orderly chess of land which is mentioned below:

- a. Orderly land law;
- b. Orderly administration of land;
- c. Orderly use of land;
- d. Orderly maintenance of land and the environment.

The Government of Indonesia further supports the above policy to establish several supporting regulations, namely the decree of the People's Consultative Assembly No.IV / MPR / 1978 on the Outlines of the State Policy which determines that development in the land sector is directed to restructure the use, control and ownership of land and the Presidential Decree (hereinafter referred to as Keppres) No. 7 of 1979 concerning the Third Five-Year Development Plan of 1979 / 80-1983 / 84. In implementing the orderly chess of land, especially those contained in point a, there are several legal regulations that are interrelated in its implementation, namely UUPA, Presidential Regulation of the Republic of Indonesia Number 17 of 2015 concerning the National Land Agency, Government Regulation No. 24 of 1997 concerning Land Registration and Government Regulation No. 37 of 1998 concerning Officials for Making Land Deeds and Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Rules of Position of Officials for Making Land Deeds. The UUPA in support of the orderly law of the land in the provisions of Article 19 of the UUPA stipulates that to guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulation, the registration referred to in paragraph 1 of this article includes: a. Land measurement, mapping and accounting; b. Registration of land rights

and the transfer of these rights; c. Granting proof of rights, which acts as a strong proof, land registration is carried out keeping in mind the condition of the State and community, the need for socio-economic traffic and the possibility of its implementation, according to the Minister of Agrarian's consideration, In the Government Regulation, the fees concerned with the registration referred to in paragraph 1 above, provided that the people who are unable to be exempt from payment of these costs.

In the elucidation of the provisions of article 19 it is determined that the land registration is carried out in a simple and easy to understand manner and is carried out by the people concerned. Government regulation No.24 of 1997 concerning Land Registration in the provision of Article 1 number 1 as part of the legal order of land land must be registered, it is determined that: Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and housing units flats, including the granting of proof of rights to plots of land for which there are rights and ownership rights over the unit of flats and certain rights that burden it. Further, in order to support the creation of an orderly law on land in the transfer of land rights based on the provisions of Article 2 of Government Regulation No. 37 of 1998 concerning the Acting Officer for Land Deed, it is determined that: 1) the Land Deed Official has the main task of carrying out some of the land registration activities by making a deed as proof of certain legal actions regarding land rights or Ownership Rights in a Flats, which will be the basis for registering changes in land registration data resulting from the legal act, 2) The legal acts referred to in paragraph (1) that are buy and sell, exchange, grant, entering into the company (Inbreng), sharing of Common Rights, granting of Building Use Rights / Use Rights on Property Right, granting Mortgage Rights, granting Power of Attorney Imposing Mortgage Rights. It is similar with the relevant study by (Barry & Roux, 2016) said that They favoured individual home ownership, they were aware of official land administration structures and processes, the considerable majority used them and intended to continue to use them. Thus there is a

compelling argument that registered ownership works and can be made to work. Particularly noteworthy is that a desire to replace lawyers in the land transaction and estate management process did not surface in any of the cases

Legal certainty for foreign nationals (hereinafter referred to as foreigners) in the provisions of Article 42 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles is determined that those who can have use rights are:

- a. Indonesian citizens
- b. Foreigners domiciled in Indonesia;
- c. Legal entity established according to Indonesian Law and domiciled in Indonesia
- d. Foreign Legal Entities that have representation in Indonesia.

Explanation of the provisions of the article by article is the right to use is a "collection of understanding" of the rights that are known in the land law with various names, all of which with a slight difference in relation to regional conditions in the region, in essence give authority to those who have as stated in this article. In the context of a simplification effort as stated in the General Explanation, these rights in the new agrarian law are called by one name only. For the use of foreign embassy buildings, use rights can also be granted, because this right can be valid as long as the land is used for this purpose. Foreign people and legal entities can be given use rights, because this right only gives limited authority. This article is the basis for the establishment of the Government of the Republic of Indonesia regulation No. 103/2015 concerning Foreign Ownership or Residential Housing Ownership domiciled in Indonesia and its implementing regulations, namely the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 29 Year 2016 concerning Administration How to grant, release or transfer the right of ownership of residential houses or dwellings by foreigners domiciled in Indonesia. Referring to Article 11 of the Government Regulation of the Republic of Indonesia Number 103 Year 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners domiciled in Indonesia, the implementing regulation is the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of

Indonesia Number 29 of 2016 concerning Procedures Granting, Relinquishment, or Transfer of Rights to Ownership of Residential Houses or Occupancy by Foreigners domiciled in Indonesia, the authors found a legal vacuum related to the ratification of the above government regulations. The legal vacuum exists in terms of how the legal certainty of the Land Deed Official deed that does not meet the minimum price standard for the purchase of flats for foreigners according to Government Regulation of the Republic of Indonesia Number 103 Year 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners Based in Indonesia and what are the consequences Land Deed Official deed law that does not meet the minimum price standard for purchasing flats for foreigners.

The following is the relevant research relating to this topic. Firstly Previous research was carried out by (Wijaya & Asrori, 2019) entitled individual ownership of land rights by foundations in karanganyar district which aims to find out and analyze the legal strength of land rights owned by foundations written on behalf of the chairman of the foundation, Procedure for settlement of land rights owned by the foundation written on behalf of the chairman of the foundation if the chair of the foundation dies, the results are found that the agreement has been made with the agreement of the parties to restore the status of the name on the land certificate which was originally in the name of John Sandi Dana to become a Living News Foundation.

Likewise, a research conducted by (Watikno & Imanullah, 2019) on legal protection of creditors who hold unregistered land rights guarantees due to debtor defaults that aims to know and analyze legal protection for creditor holders of land rights that have not been registered if the debtor has defaulted upon the expiration .and the results were found that the position of the creditor who holds the guarantee of land rights that have not been registered is as a concurrent creditor, that is, creditors who do not have the right to repay earlier than other creditors and receivables of concurrent creditors are not guaranteed with material rights. thus, the creditor cannot execute directly on the collateral object in the event of a default by the debtor.

Then, the last was done by (Ariandayu & Karjoko, 2019) entitled the

implementation of the principle of affordable land registration in Sukoharjo regency to accelerate land certification, which aims to study the implementation of the affordable principle in the land registration process in Sukoharjo Regency in order to accelerate land certification and the results found that the cost component of land certification in Sukoharjo Regency has not fulfilled the affordable principle, either done by the applicant's person personally or through PPAT. This is caused at the stage of determining BPHTB whose transaction value is lower than the United Nations NJOP, a UN NJOP value is higher than the original UN NJOP in the current year. Then, if you arrange it via PPAT, you will be charged additional costs, the amount of which varies according to the transaction.

Based on the previous study above, the main issues can be stated in this current study as follows what is the legal certainty of the Land Deed Official deed that does not meet the minimum price standard for purchasing flats for foreigners residing in Indonesia and what is the legal consequence of the Land Deed Official deed that does not meet the minimum price standard for purchasing flats for foreigners?

2. METHODS

This current study used normative legal research method which starts from the absence of legal norms or legal principles. The absence of legal norms in this study is contained in the provisions of Article 11 Government Regulation of the Republic of Indonesia Number 103 Year 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners domiciled in Indonesia does not explicitly regulate the legal consequences of the Land Deed Official which do not meet the minimum price standard for purchasing apartment single or apartment unit for foreigners.

3. RESULT AND DISCUSSION

Legal Certainty of Land Deed Official Deed that does not meet the Minimum Price Standards for Purchasing Flats for Foreigners according to Government Regulation of the Republic of Indonesia Number 103 Year 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners in Indonesia.

Land is a part of the earth's surface that has various types of land rights both on the surface of the land, which is

embedded in the soil or in the body of the earth. All land rights are included in state control but do not mean that they are owned by the state but only give authority to the state, as stated in Article 2 paragraph (2) of the LoGA, namely: Arranging and carrying out the allotment, use, supply and maintenance of the earth, water and space, Determine and regulate legal relations between people and the earth, water and space, Determine and regulate legal relationships between people and legal actions concerning earth, water and space.

According to (Perangin, 1991), in connection with the provisions of Article 2 paragraph (2) of the BAL above, if someone controls land without rights (title) is called illegal control. UUPA along with the progress of time has produced many laws and regulations below it according to the hierarchy level of laws and regulations. One of them is Government Regulation of the Republic of Indonesia Number 103 Year 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners domiciled in Indonesia and implementing regulations namely the Minister of Agrarian and Spatial Planning / Head of the Republic of Indonesia's National Land Agency Number 29 of 2016 concerning Procedures for Granting, Relinquishment, or the Transfer of Right of Ownership of Residential Houses or Occupations by Foreigners Based in Indonesia. The Government explicitly regulates the Minimum Price Standards for Purchasing Flats for Foreigners Based in Indonesia under Article 11 of the Republic of Indonesia Government Regulation No. 103/2015 on Ownership of Residential Houses or Occupancy by Foreigners Domiciled in Indonesia. Based on the attachment to the standard price and substance of the provisions of the article contained in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 29 of 2016 concerning Procedures for Granting, Relinquishing, or Transferring the Right to Owning Residential Houses or Occupations by Foreign Resident In Indonesia, there is a legal vacuum that causes legal uncertainty over the Land Deed Official deed that does not meet the minimum price standard for purchasing flats for foreigners. Legal consequences related to the above can potentially lead to dishonest selling prices of flats in the sale and purchase tax payment process that can

lead to fictitious prices in order to pursue the requirements of the law and pass the tax fermentation before the signing of the sale and purchase agreement is carried out to obtain proof of payment of the BPHTB Tax and PPH. The standard of buying and selling values is very important to help the state in taxation to carry out development and governance. The laws and regulations that are formed should provide guarantees of legal certainty. Based on the theory of legal certainty so that no legal vacuum should occur: First is the existence of general provisions / rules that can provide understanding to the Legal Subject consisting of Persons or Legal Entities to find out what actions may or may not be done. The second substance is a guarantee of legal protection for legal subjects from the arbitrary actions of the government. With the existence of general legal rules, the Legal Subject can know and understand related to what matters that can be charged or done by the State against it. Legal certainty is not only in the form of articles in the law but also in the consistency in the decisions of judges between the decisions of one judge and the decisions of other judges for similar cases that have been decided.

Theoretically the formation of good legislation must at least avoid eight fatal things namely failure to establish rules at all, leading to absolute uncertainty, failure to make rule public to those required to observe them, improper use of retroactive law making, failure to make comprehensible rules, making rules which contradict each other, making rules which impose requirements with which is impossible compliance, changing rule so frequently, discontinuity between content and implementation.

Land Deed Official that makes a deed violates the provisions of the Minimum Unit Purchase Price of Flats for Foreigners According to Government Regulation of the Republic of Indonesia Number 103 Year 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners domiciled in Indonesia may be held accountable by the government if the violation is found at the time registration certificate. In the theory of legal liability, abuse of authority can be solved by two indicators that is the *fautes personnelles* theory, namely the theory which states that losses to third parties are charged to officials who because of his actions have caused losses. In this theory the burden of responsibility is directed at humans as

individuals.

The *fautes de services* theory, namely the theory which states that losses to third parties are borne by the agency of the official concerned. According to this theory the responsibility is borne by the position. In its application, the losses incurred are also adjusted whether the mistake made is a serious error or a minor error, where the severity and severity of an error has implications for the responsibilities that must be borne. Besides being a form of government accountability, if there is a violation committed by the government in this case the ministry of ATR / BPN if it is harmed related to the sale and purchase deeds of residential houses or dwellings by foreigners who do not meet the minimum price standard for the purchase of flats, they can refuse the registration of the sale and purchase deeds as one form of consequence.

Legal Consequences of Land Deed Official Deed That Does not Meet Minimum Price Standards for Purchasing Units for Foreigners.

The minimum price standard for purchasing flats for foreigners has been discussed on the previous page of this study and is expressly regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 29 of 2016 concerning Procedures for Granting, Releasing or Transferring Rights Regarding Ownership of Residential Or Residential Houses by Foreigners Based in Indonesia and the implementing regulations, namely the Republic of Indonesia Government Regulation No. 103/2015 on Ownership of Residential Houses or Occupancy by Foreigners domiciled in Indonesia. Legally the above laws and regulations have weaknesses given the absence of legal norms related to the Land Deed Official deed law that does not meet the minimum price standard for purchasing flats for foreigners. Indriyanto Seno Adji provides an understanding of the abuse of authority in state administrative law by quoting the opinions of (Rivero & Waline, 1994). Abuse of authority can be interpreted in 3 (three) forms, namely a) isuse of authority to take actions that are contrary to the public interest to benefit personal, group or group interests. b) misuse of authority in the sense that the official's actions are properly submitted in the public interest, but deviates from the purpose of what authority is given by law or other

regulations, c) abuse of authority in the sense of abusing procedures that should be used to achieve certain goals, but has used other procedures to be carried out.

The legal theory above is a standard assessment to state that a Land Deed Official who exercises his authority in making the deed is in accordance with the provisions in force or not, or there is an abuse of authority in it. To further deepen this research study related to the absence of legal norms contained in this thesis research, it should be Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 29 of 2016 concerning Procedures for Granting, Releasing, or Transferring the Right to Owning Houses Residential or Residential by Foreigners Residing in Indonesia and the implementing regulations namely the Government of the Republic of Indonesia Number 103 of 2015 concerning Ownership of Residential Houses or Resettlement by Foreigners Residing in Indonesia in the future will be revised so that it becomes a rule capable of reaching legal issues that will happen in the future and provide firmness and clarity to be carried out. In the theory of the law of the will by John Austin stated that the legal system so that there is no legal vacuum should:

The law is understood as a set of symbols that explain the will, the sovereign party in the state, regarding the behavior that occurs due to certain cases between individuals or between groups; The legal system in the sense of the entire valid legislation comes from the will of the sovereign at a certain time momentum and in certain societies factually obeyed and enforced in accordance with the principle of unity of the will. The Land Deed Official deed whose object is not in accordance with the provisions of the legislation consequently for the deed is null and void. Matters underlying the cancellation of the land purchase agreement tied to the sale and purchase deed issued by the Land Deed Official are: Non-fulfillment of the conditions set by law for this type of formal agreement, which results in an null and void agreement; Non-fulfillment of legal terms of agreement; Fulfillment of terms canceled on the type of agreement that is conditional; Cancellations by third parties on the basis of Paulina's actions. The purpose of the Agreement is to give birth to a legal agreement, to give birth to a legal agreement requires the legal conditions of

an agreement. Based on Article 1320 of the Civil Code, the terms of agreement are: Agreement of the parties; Ability A certain thing; for the lawful. If an agreement does not meet the subjective conditions of agreement or ability to act from the parties, then the agreement "can be canceled". Can be canceled means that one party can request a cancellation. Existing agreements remain binding on both parties as long as they are not canceled (by the judge) at the request of the party entitled to request cancellation. Covenants that do not meet the objective requirements, namely a particular thing or a halal cause, in this case the promised object is contrary to the existing legislation, the agreement is "null and void". Cancel by law means that from the beginning it was thought that there was never a covenant and there was never an agreement. The legal consequences of the Land Deed Official deed that do not meet the minimum price standard for purchasing flats for foreigners are null and void because they contradict the objective conditions for the legality of the agreement stipulated in the provisions of Article 1320 of the Civil Code on certain matters for which the benchmark is clear, required and justified by law.

4. CONCLUSION

Based on the results of this study, it can be concluded that firstly legal certainty of the Land Deed Official deed that does not meet the minimum price standard for purchasing flats for foreigners according to the provisions of Article 11 Government Regulation of the Republic of Indonesia Number 103 Year 2015 concerning Ownership of Residential Houses or Occupancy by People Foreigners domiciled in Indonesia still have a legal vacuum and secondly the legal consequences of the Land Deed Official deed that do not meet the minimum price standard for purchasing flats for foreigners are null and void, because they contradict the objective conditions for the validity of the agreement stipulated in the provisions of Article 1320 of the Civil Code on certain matters for which the benchmark is clear, required and justified by law.

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