



## Legal Analysis of Ownership Rights of Flat Units by Foreign Citizens in the Job Creation Act

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### **Abstract**

This study aims to determine the property rights policy of the apartment unit by foreign nationals which is in accordance with the principle of horizontal separation or not. And know the ownership rights to the apartment units that are intended for foreign nationals in the Job Creation Act in line with the principle of equitable distribution of land or not. The type of research used is doctrinal. The data used are secondary data which contains primary and secondary legal materials. The method of data collection was carried out by literature study. Data analysis uses qualitative data with a statue approach problem. The findings of this study are the conformity of the policy of property rights to flat units by foreign nationals against the principle of horizontal separation which is basically appropriate, because the principle of horizontal separation is the principle that separates land ownership rights from objects or buildings, plants on it, thus the horizontal principle This does not regulate the ownership owned by foreigners. and secondly, the suitability of property rights to flat units for foreign nationals in the Job Creation Act with the principle of inappropriate distribution because the work copyright law stipulates that if a foreign citizen has ownership rights to the flat unit, the apartment unit is built on state-owned land, state land should be used for the needs of Indonesian citizens.

**Keywords:** *Flats Unit; Property Rights; Foreign Citizens; Job Creation*

### **Introduction**

Indonesia is a very rich country that comes from natural resources, one of which is a very wide land area. From the study sources of the Ministry of Education and Culture, Indonesia's land area is 1,919,440 km (Detikcom & DetikTravel, 2020). The natural wealth is regulated in Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which reads "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest benefit for the prosperity of its people." Thus, this abundant natural wealth is regulated by the state constitution for the prosperity of all Indonesian people and its management is regulated by the state. So it must be used by the State to fulfill the prosperity of the people, therefore foreigners should have restrictions to own land in the State of Indonesia.

The year 2045 is predicted to be a golden year for Indonesia with development progress in several sectors, namely technology, economy and infrastructure, Indonesia's demographic project is predicted to experience a surge with a population of 318.9 million people and a population growth rate of 0.42. - 0.54%. This population growth will have the impact of increasing the need for housing for the people of Indonesia, where the challenge is that the land is not expanding, but the population is increasing. (PERKIM.ID, 2021). In relation to the above, Indonesia actually uses the principle of prohibiting land alienation. This principle explains that land in Indonesia can be owned by Indonesian legal entities and Indonesian individuals. Thus, foreigners are not allowed to own land in Indonesia (Purnamasari, 2010). The definition of property rights is a right that can be inherited or hereditary and fullest, besides that it is also the strongest that can be owned by individuals on land and gives the authority to use it for various powers to use it for various needs when the time is not available. limitations, which as long as there is no such special prohibition (Harsono, 1997). Moving on from the above understanding, it can be seen that ownership rights are related and also the fullest rights that people can have on the land. The mechanism applied in Indonesia is also not sufficient to meet the housing needs in Indonesia.

Furthermore, related to the ownership of the apartment unit, it is known as a certificate of ownership of the apartment, which is usually abbreviated as SHM RS. SHMRS is a type of ownership that is given by the owner of the right to the apartment unit, the forms of ownership rights to the apartment unit must be distinguished from the types of ownership rights to residential houses and land in general. SHMRS has a close relationship with joint rights to land, objects, and shares. Therefore, individual property rights are ownership rights of someone who has purchased an apartment. This flat is basically a room in a three-dimensional geometric type that is limited by a partition or wall and is used separately and not together. This individual right has the image in the description of the apartment. (Kaloo & Dkk, 2009)

Thus in Article 2 of Government Regulation no. 103 of 2015 concerning Ownership of Residential Houses or Occupancy by Foreigners who are domiciled in the country of Indonesia grants the right of use to flat units, where the provisions stipulate that foreigners can own a house for dwelling or residence with the right to use, with the arrangement that the foreigner has residence permit in Indonesia which is regulated in laws and regulations, furthermore related to these rights can also be inherited with the provision that foreigners as heirs must have a residence permit residing in Indonesia and in accordance with the provisions of laws and regulations.

As mentioned above, it can be seen that foreign nationals only have the right to use the apartment unit, and do not have ownership rights to the apartment. Based on Article 41 paragraph 1 of Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles. Use of Right to Use is the right to use or take advantage of land which is in direct control by the government or the state or also land owned by another person, which has the obligations and also the authority stipulated in the decision to giving by an official who has the authority to give or in the land ownership agreement, which is not included in the lease agreement and or land management, all things as long as there is no conflict with the soul and also the laws and regulations. This arrangement is quite in accordance with the basic law as mentioned above, where property rights, which are essentially the strongest rights, can only be owned by the Indonesian people.

However, on October 5, 2020, after the Draft Work Copyright Act was ratified to become Law, several provisions regarding the ownership status of property rights to flat units by foreigners underwent changes. Which is regulated in Article 144 of the Law on copyright, which conveys the requirements for property rights to flat units which are given to five groups, namely Indonesian citizens, foreign nationals who have permits in accordance with statutory regulations, legal entities that are in Indonesia, foreign legal entities that have representatives in Indonesia and international institutions and representatives of foreign countries that exist or have representatives in the State of Indonesia. Article 144 paragraph 2

explains if the ownership rights to the apartment unit can be transferred or transferred and can be guaranteed.

Thus, from the above provisions, foreign citizens have the opportunity to have ownership rights to flat units. This policy raises pros and cons. Those who are pro have an opinion that the property business in Indonesia will develop rapidly with this provision, while those who do not I agree that I am worried that many middle-class citizens are increasingly finding it difficult to have a decent house or in the middle of the city.

By allowing foreign nationals to own an apartment unit, it will have a negative impact on the people of Indonesia, because this arrangement has not been accompanied by a clear regulation of ownership mechanism. The arrangement for ownership of flats should be able to see other countries such as Singapore, Australia, and Malaysia, where the arrangement has taken into account the value, shape or location. Because if it is not regulated in detail regarding the value, shape or location, the Indonesian people who are in the lower middle class will be harmed and this will violate Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that the ownership of flats for citizens For foreigners, the principle of equitable distribution of land does not work well and also the principle of horizontal separation is the principle that separates the plants and buildings that are above so that they are not only used by Indonesian citizens. From the data on the Percentage of Households by Province and Owned Home Ownership Status in 2018, 2019, 2021, the authors obtained from the Central Statistics Agency are as follows (BPS, 2021) :

Provinsi	Persentase Rumah Tangga menurut Provinsi dan Status Kepemilikan Rumah Milik Sendiri (Persen)		
	2018	2019	2020
ACEH	81,21	80,32	80,96
SUMATERA UTARA	68,32	68,35	69,16
SUMATERA BARAT	71,21	70,75	71,24
RIAU	69,90	70,55	69,78
JAMBI	83,64	82,26	84,32
SUMATERA SELATAN	80,65	81,52	81,76
BENGKULU	83,39	82,72	83,56
LAMPUNG	87,89	88,60	88,39
KEP. BANGKA BELITUNG	85,91	85,51	85,33
KEP. RIAU	69,44	66,62	66,37
DKI JAKARTA	47,85	47,12	45,04
JAWA BARAT	77,71	77,89	77,60
JAWA TENGAH	88,17	89,04	89,20
DI YOGYAKARTA	76,54	73,29	74,55
JAWA TIMUR	87,46	87,58	87,12
BANTEN	81,33	80,36	82,26

  

Provinsi	Persentase Rumah Tangga menurut Provinsi dan Status Kepemilikan Rumah Milik Sendiri (Persen)		
	2018	2019	2020
SUMATERA UTARA	68,32	68,35	69,16
SUMATERA SELATAN	80,65	81,52	81,76
SUMATERA BARAT	71,21	70,75	71,24
SULAWESI UTARA	77,65	77,27	78,67
SULAWESI TENGGARA	84,43	85,28	86,14
SULAWESI TENGAH	84,32	84,31	84,32
SULAWESI SELATAN	83,61	83,69	83,40
SULAWESI BARAT	86,85	86,80	87,56
RIAU	69,90	70,55	69,78
PAPUA BARAT	69,19	71,27	72,09
PAPUA	81,36	82,12	83,05
NUSA TENGGARA TIMUR	85,91	86,88	87,39
NUSA TENGGARA BARAT	85,48	87,15	87,43
MALUKU UTARA	83,87	82,73	83,65
MALUKU	80,09	79,48	79,00
LAMPUNG	87,89	88,60	88,39

Based on the data above, it can be seen that there are still many Indonesian people who do not have a residential house, especially in the city of Jakarta, the percentage is only 45.04 percent, this is very low, meanwhile land in Jakarta is also limited, and with the policy of foreign residents can If you have an apartment, the solution to providing flats for Indonesian citizens will be reduced and the opportunity for Indonesian citizens to own a house or occupancy is also getting lower, thus Indonesian citizens will be very disadvantaged if this policy is not regulated properly. Solution Vertical housing with the policy of foreigners being able to own flats will not work properly (Firdaus, 2018). Meanwhile, in September 2019 from data on poor families in Indonesia, which had 4.58 family members, the Indonesian Center for

Economic Reforms gave an estimate that the number of people below the poverty line has the potential to grow from 5.1 million to 12.3. Millions of people in the second quarter of 2020 (Ismi, 2021).

Based on the background that has been explained, the authors in this study will conduct research and review in a clear and detailed manner in relation to whether the policy on property rights of flat units by foreign nationals is in accordance with the principle of horizontal separation and whether ownership of flats for foreign nationals What is regulated by the Job Creation Law in line with the principle of equitable distribution of land?

The objectives to be achieved in this research are as follows:

1. To find out whether the policy of ownership of flats by foreign citizens is in accordance with the principle of horizontal separation or not.
2. To find out whether the ownership of flats for foreign nationals as regulated by the job creation law is in line with the principle of equitable distribution of land or not.

### **Research Methods**

Research conducted by the author using doctrinal or normative research methods is legal research carried out by researching library materials by basing law as a norm. (Bahder, 2008). This study uses secondary data in the form of secondary legal materials and also primary legal materials. In this research, the data collection method was carried out by the author using a literature study. Data analysis is carried out with qualitative data with a problem approach, namely the statue approach (Hermawan & Amirullah, 2010).

### **Research Results**

#### **Conformity of the Policy On Property Rights of Flats by Foreign Nationals with the Principle of Horizontal Separation**

In relation to the policy of property rights to flat units by foreigners based on certificates of ownership of flats. SHMRS is ownership that is given to the holder of the right to the flat, which must be made a distinction between the types of land and house ownership rights which are basically or simple. To discuss the ownership rights to flat units with the principle of horizontal separation, it is necessary to first understand the principle of horizontal separation. The principle of horizontal separation is the principle that separates plants and buildings that are on the land, thus ownership of plants and buildings on a plot of land does not fall freely to the person who owns the land. Legal action against land does not automatically consist of plants and buildings belonging to the owner on his land. If the legal action against the land also consists of plants and buildings, then it must be clearly stated in the deed that provides evidence of the implementation of the related legal action.(U. Santoso, 2012).

In Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles Article 44 paragraph (1) regulates the principle of horizontal separation which states that a legal entity or a person has a lease right on land, if that person has the right to use land owned by another person for building needs, by payment to the owner of the money for the rent. In addition, the principle of horizontal separation is regulated or found in decision number 38/Pdt.G/2013/PN.Kdr, in that decision the judge conveys that if the principle of horizontal separation is used in Indonesian law, it states that plants and buildings are not part of the land. which causes land rights do not automatically consist of ownership of plants and buildings located on it. In the decision, the judge gives consideration if based on that principle, it is possible for the same land to have various ownership rights to the land at the same time.

In land law, apart from the horizontal principle, it is also known as the principle of vertical separation. The vertical principle is the opposite of the horizontal principle (Utomo, 2019) The principle of vertical attachment is a principle based on land ownership and also all objects attached to it into a single unit which is counted as one. In state land law, using the principle of accessie, plants and buildings that are above and basically are a unit that cannot be separated from the land are part of the land that is related. Automatic land rights consist of ownership of plants and buildings that are on the land that belongs to them. Except in this case there is another agreement with the party who planted or built it (Andari & Purwoatmodjo, 2019). The non-use of this principle by national law is understood as an interpretation because it is explained by many sources that it is better to use the principle of horizontal separation (Dwiyatmi, 2020).

Thus the certificate of land rights becomes proof of ownership rights to the land and also becomes evidence of everything that is on the land. This is an embodiment of the vertical principle, as a land title certificate is the implementation of the vertical attachment principle and some certificates become the formation of the horizontal separation principle, which results in the legal proof process for proof of ownership of land so that there are various types of people who have certificates of land rights. land directly claims itself to be the owner of all immovable objects on it.(Sutiana, 2014)

The policy for apartment units for foreign residents is regulated in paragraph 3 of the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation regarding Flat Units for Foreigners. Where in Article 143 it is stated that if the right of ownership to the apartment unit is the right of ownership to the apartment unit which has individual characteristics that separate it from joint rights to objects, parts and also shared land. Therefore, this law adheres to the use of the principle of horizontal separation.

Thus, related to the principle of horizontal separation with the policy of ownership of flat units by foreign citizens, if Article 143 of the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation, there are several meanings that can be separated, namely the first related to shared land, Based on Article 1 point 4 of the Law, shared land flats are parcels of land with rights or leased land for building purposes that are used based on joint rights which are not separated from the above there is an apartment and whose limits are determined in the terms of the permit to construct a building. Second, the joint part, based on Article 1 point 5 of the Flats Law, the joint part is the part of the apartment which is owned non-separately to be used together with a unit of task with the apartment unit. Thus the meaning of the shared part here according to the explanation of Article 25 paragraph 1 of the Flats Law, namely walls, foundations, beams, gutters, floors, roofs, elevators, stairs, hallways, electricity networks, gas pipelines, and lastly is telecommunications. And the third is shared objects. Based on Article 1 point 6 of the Flats Law, what is meant by shared objects are goods which are basically not part of the apartment but are part that is jointly and inseparable for joint use, meanwhile based on the explanation Article 25 paragraph 1 of the Flats Law means that shared objects include buildings, meeting rooms, social facilities, places to play, worship, parking that is separate or integrated with the building structure of the apartment. (Hasanah, 2021).

Regarding joint rights to objects, land and parts, together have a strong bond with ownership rights to this apartment unit, according to Erwin Kallohak, ownership of one person is the property of the person who has purchased the apartment unit. The unit here is a room in the form of a three-dimensional geomatrix bounded by a wall that is used not together or separately. This individual right is basically described in the description of the apartment, which shows in more detail the boundaries of the apartment unit, parts, objects, and also shared land, and the comparative value of the description and proportion..(Kaloo & Dkk, 2009)

Furthermore, in the research that will be carried out, the author will compare with Singapore, Malaysia and Australia because the three countries are neighboring countries and also Indonesia as an

economically developing country can make Singapore, Australia as one of the role models in constructing flats. especially in terms of regulations, meanwhile it is compared to Malaysia as a comparison among developing countries and can be compared to the policies taken by that country towards the State of Indonesia. When compared to that in Singapore, related to the flat system that has been neatly regulated, the concept of land ownership in Singapore states that if land is controlled by the state, then it is not subject to absolute ownership but based on a certain period of time. (Yee et al., 2009). In Singapore, the state gave rise to land rights which were basically introduced with the term estate, the term of land in Singapore can be divided into three types, namely Freehold Estate, Leasehold Estate, and Estate in Perpetuity. (Halsbury, 2005).

In Singapore and in Australia, basically using the word Strata Title, that is, there is joint ownership, namely horizontally in addition to vertical ownership. In Australia the strata title arrangement is a legally recognized arrangement whereby a building as well as the land being built on it is erected divided into units and the units have separate rights. The transfer is carried out not inherently limited, the ownership is shared which is used by the occupants of the unit but is owned by a legal entity that acts as an agent for the unit owner in a certain proportion. (Hutagalung, 2004).

Meanwhile, for the State of Malaysia, there is an institution that has the responsibility to give approval regarding property ownership by foreign nationals, which is known as the Foreign Investment Committee (FIC). In general, all assets owned by foreigners require an approval from the FIC, in relation to their value, the minimum price for assets owned by foreigners is RM.250,000, except if land is needed for industry, all assets cannot be sold no later than a period of 3 years from the date of approval from the FIC, certain conditions or restrictions for foreign nationals to own residential property, especially foreigners who are not allowed to own landed property, in Malaysia recognize the existence of the Malay Reservation Act, which primarily prohibits foreign nationals from owning land that is specifically used for Malaysian citizens (Hadisusilo, 2009).

When compared with the existing law in Indonesia, there are significant differences, where in Singapore, and Australia and Malaysia, there are already strata form of flats and ownership is given a time limit and there are classifications of flats that can be paid for by foreigners. Meanwhile, in Indonesia, the strata system of flats that can be owned by foreigners is not regulated in such a way, meanwhile property rights are not limited in time and there is no classification of houses that can be purchased by foreigners. In addition, what makes the difference is that the law in Indonesia adheres to the principle of horizontal separation, an example of which can be viewed from mortgage rights, land in Indonesian land law has the meaning of the earth's surface and also land rights are rights to part of the earth's surface which are limited to two dimensions, namely width and length. (Harsono, 2003). Meanwhile, in Singapore, the principle of *accessio* or attachment is used which states that every plant and building located on a plot of land is a unit and part of the land..

So, the suitability of the policy on property rights of flats by foreigners with the principle of horizontal separation is theoretically appropriate because the principle of horizontal separation is a theory that provides separation between land ownership rights and the buildings on it or something attached to it. This policy is appropriate when compared to adhering to the use of the principle of vertical separation in which land and objects on it become an inseparable unit, if this principle is followed, ownership by foreign nationals will be contrary to the constitution. However, the use of this horizontal principle must also be considered further and see and compare with the implementation in other countries, this is confirmed in the Basic Agrarian Regulations which states that if a legal entity or a person has a right to lease the land, if he has the right to land. use someone else's land for building needs. Therefore, foreign nationals can rent flats. The concern is related to the status of ownership by foreign nationals which is not regulated in the principle of horizontal separation. However, in principle, the principle of horizontal separation does not stipulate that ownership must be an Indonesian citizen or a foreign citizen, only the status of the object or building that is on the land ownership is regulated. Basically the principle of

horizontal separation philosophically functions to maximize the function of land and to realize social justice for Indonesian citizens, thus the implementation of the principle of horizontal separation must be supported by other legal institutions so that its implementation is appropriate for the justice of Indonesian citizens. (Tista, 2018).

The regulation of ownership of the Flats Unit by foreigners is not meta based only for investment purposes by facilitating regulations for foreign parties, but the State of Indonesia must pay attention to non-technical factors that are running. For example, in Singapore, consistent, clear and transparent law enforcement is as important as legal ease. This is encouraged by human resources that can be accelerated, and educated thus will eliminate appropriate acts of corruption in developing countries. Another important factor is political stability. Indonesia can learn and imitate from Singapore, not only from a legal perspective, but from a non-technical perspective, both legally and in public life. (Tigris & Sujadi, 2019).

### **Conformity of Ownership of Flats for Foreign Nationals as Regulated by the Job Creation Law with the Principle of Equitable Distribution of Land**

One of the most important things in the regulation of land law is regarding the legal relationship between objects and other land attached to it. Legal certainty regarding the legal position of objects attached to land is important, because in these circumstances it has a very wide impact on all legal relationships related to land and also objects attached to it.

As described in the previous discussion regarding the ownership rights of flat units by foreign nationals. In the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation, Article 144 is regulated regarding legal subjects who can have property rights to flat units including Indonesian citizens and legal entities, foreign citizens who have permits in accordance with the provisions of the legislation. , foreign legal entities that have representatives in Indonesia, or, representatives of foreign countries as well as international institutions that exist or have representatives in the State of Indonesia.

From the article above, foreigners who have permits in accordance with the provisions of the law are entitled to have ownership rights to the apartment unit. Thus, it is necessary to review the ownership of flats for foreign nationals as regulated by the job creation law with the principle of equitable distribution of land. Regarding the principle of land distribution related to flats by foreign nationals, it is regulated in Article 145 of the Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation which states that flats can be built on land, namely:

- Building use rights or use rights on state land which can be granted automatically along with an extension of the rights after obtaining a certificate of function worthy
- Building use rights or use rights on management land that can be renewed and extended if they have obtained a proper function certificate.

Thus, in accordance with article 144, the ownership rights to the apartment unit can be guaranteed by being given a mortgage in accordance with the laws and regulations.

Meanwhile, justice originally emerged from the word fair, based on the Big Indonesian Dictionary, fair is impartial, not partial, not arbitrary. Justice is generally a relative concept, not everyone has the same level of justice, when people assert that if he does a justice, it must be in accordance with public order which scale can be ascertained. The scale of justice has variations from one place to another, each scale is given an understanding and is entirely determined by the community in accordance with the public order of that society. (M. A. Santoso, 2014).

In Indonesia, justice is contained in the fifth precepts of Pancasila which has the sound of social justice for all Indonesian people, which contains the value of purpose in living together. Justice is based

on and is also imbued with the meaning of human justice which means having human relationships with other humans. man with the nation, the state and society and the relationship between man and his god, man with himself, (M. A. Santoso, 2014). According to Aristotle, justice is a virtue that has a general nature. In this connection, Aristotle adds that justice is in the sense of equality. Numerical equality, for example, all people are equal before the law, proportional equality is giving people what they are entitled to, according to their achievements and abilities. (Rhiti, 2015).

According to Aristotle, justice is divided into two, namely distributive justice which means justice that applies in public law and also corrective justice is a justice related to justifying certain things that are not true, giving compensation to the injured party or very appropriate punishment for the perpetrators of the crime. criminal law, thus compensation and punishment constitute justice. The theory of justice according to Aristotle can be divided into the following, namely:

- a. Justice in the division of office and public property
- b. Justice in carrying out buying and selling
- c. Justice is an asymmetric equality in the public and private spheres
- d. Justice in the field of legal interpretation (Rhiti, 2015).

With regard to justice in the ownership of flats for foreigners, it has an impact on Indonesian citizens, which can be described, namely the provisions regarding the ownership rights of flats to foreigners on the right to use this building overlaps with Article 19, Article 20 and also Article 21 Law No. 20 of 2011 concerning flats, which in essence states that using state-owned land to build flats is carried out by way of cooperation in utilization, or by way of lease. Thus there is a conflict between the law on flats and job creation and this has an unfavorable impact on Indonesian citizens because if the flats are built on State land, the State land will not be utilized as much as possible for the Indonesian people themselves.

These provisions are not in accordance with the principle of nationalism, the principle of Indonesian socialism and also the principle of the prohibition of transferring ownership rights to foreign citizens as a principle of agrarian law and also the principle of settlement and housing law. In this case, land ownership, the needs and interests of Indonesian citizens must be prioritized and also those who are privileged. This is as stated by Chesterman and Brian Galligan who state that citizens are traditionally an exclusive category because citizens have basic rights and also special rights that non-citizens do not have. The inconsistency of the allocation illustrates that policy makers ignore Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which regulates the earth, water and natural resources to be used for the greatest prosperity of the people. It is appropriate for legislators to have only one use, the most important thing is the ultimate goal for the greatest prosperity of the people. Because in this case the investment interests are foreign and only used for the upper middle class. Whereas basically the apartment unit is expected to be a solution to the lack or limited urban housing owned by its citizens (A & Wulandari, 2020).

Furthermore, related to existing justice, if the construction of the apartment unit is carried out on land owned by the state, then this is a degradation of the social function of the existence of state land. Basically, land controlled by the state is used for the needs of its citizens. The state land can be used as an object of agrarian reform to be distributed to poor people who do not own land or houses to realize the 5th principle of Pancasila, namely social justice for all Indonesian people. So by being given ownership rights to flats built on top of the State, it indirectly harms the existence of justice in the distribution of land. Where the priority should be to be able to use the land is an Indonesian citizen.



Units of flats built on certain land will have the same character as the land being built. So, it would be better if land ownership rights were only used for Indonesians, while foreign nationals could occupy or inhabit flat units by using usufructuary rights over flat units or by using rental rights. This concept of use has been used in several neighboring countries of Indonesia, such as Singapore, China, and Malaysia, which provide land use or land rent to foreign nationals instead of giving land rights to foreign citizens' land tenure in their own country.

So, according to the author, based on the theory of equitable distribution of land, the regulation of property rights for flats in the law on job creation is not appropriate, because the construction of flats on state land and foreign nationals have the same ownership rights to the apartment units. The foreign citizen has land rights, as the base of the land is the same as the base of the apartment unit. This is unfair because many poor people do not have shelter or temporary houses when the government or the state owns land built for flats that foreigners use to own it, on that basis the policies regulated in the work copyright law do not fair and not in accordance with the principle of land distribution.

One of the breakthrough efforts to overcome the complex problem of meeting the need for land for residential purposes or other interests is basically using the application of a land bank which has the function of collecting land, securing land to secure the provision and designation and use of land in accordance with the spatial planning that has been established. Validate. (Mochtar, 2013). The complexity of the problems in land acquisition is a sign for the government to revise policies in the agrarian sector. The policy revision needs to be carried out by leading to a mechanism for providing land for the construction of public interest facilities that can facilitate the interests of the government and also the land-owning community, thereby guaranteeing the fulfillment of the value of justice for all people in Indonesia. The concept of implementing a land bank can be used as an alternative to providing non-conflict land that can complement the demands for the value of justice for all Indonesian people (Arrizal, 2020). This is an action to anticipate the population explosion to manage the land (Arnowo, 2021).

Land bank itself comes from two terms, namely land banking which means land banking which is used to describe actions that have a relationship with land banks and also land banks which are used to describe the existence of institutions or collaborations with inter-institutions that have activities in the field of land acquisition. Or the term land bank according to Schwarz is "Land banks are governmental or non-profit entities that assemble, temporarily manage, and dispose of vacant land" (Schwarz, 2019). Thus a land bank is a land policy that the state passes through an independent institution or government agency chosen by the government with the authority to carry out the transfer of abandoned land or land that has problems, land that is not developed and also land that has the potential to develop, regulate and also manage land temporarily and also redistribute it for public purposes in accordance with government programs, whether it is a long program or a short program. (Zahra, 2017). The implementation of the land bank program is very important because with the land bank it can be used as a medium or instrument to support land policies and also provide support for efforts to develop areas effectively and efficiently and to control, control, and use land fairly and fairly. the existence of a land bank will also support the implementation of the apartment unit program (Limbong, 2003).

Based on the Government Regulation of the Republic of Indonesia Number 64 of 2021 concerning the Land Bank Agency which is the basis for making this law, namely the 1945 Constitution of the Republic of Indonesia which regulates land in Indonesia, this is explained in Article 33 paragraph (3) which states that if the power given to the earth, water and natural resources contained therein lies with the State and for that the State is obliged to regulate ownership and lead its use. Thus, the purpose of Article 33 paragraph (3) is that all land in the entire territory of the Indonesian nation's sovereignty is used for the benefit and as much as possible for the prosperity of the Indonesian people. This law is an effort by the central government to carry out reforms in the agrarian sector, especially regarding land management, national development, economic equity, agrarian reform, and land consolidation. With this law, the government establishes a land bank agency that has specific authority to provide guarantees for

the existence of land in a fair economic effort for public, social, economic, national development, and land consolidation and agrarian reform by owning, namely acquisition and planning. land, procurement, utilization, management and distribution of land. In relation to the construction of flats, the land bank primarily has a strategic role to regulate the equitable distribution of land and also the process of using it so that it is right on target. The use of land in this law is regulated in Article 14 which states that land use is carried out in collaboration with other parties in the form of leases, buying and selling, grants, business cooperation, exchanges, and other forms agreed with other parties. . Where the implementation takes into account the principles of priority and expediency. Compared to the Netherlands, land banks have the function of developing government land policies, managing land owned by the government and also implementing government land sales. (Milicevic, 2014). Meanwhile, Indonesia has implemented a land bank practice in Mariso District by using 1.2 hectares of land which is an asset of the Makassar city government (Amir, 2014).

If it is associated with the concept of a land bank, the ownership of flats by foreigners is not in accordance with the principle of equitable distribution of land because in its regulation foreigners are free to own flat units without restrictions, even though with the existence of a land bank, each land must be regulated regarding its use and the priority it gives. namely its distribution for social and community interests. Supposedly for foreign nationals it is implemented with a cooperation system through lease rights, building use rights or others so as not to affect land ownership. Because if foreigners have property rights then this is no longer the right target for land distribution by the government.

Fundamentally, the use of land with the aim of making a profit will have differences with those carried out by state-owned enterprises or the private sector, the land bank will have profits that are combined with capital which will then be used as funds for land management or the construction of public facilities. (Zahra, 2017). The land bank has the advantage that it can guarantee to carry out renewal and extension of land rights in accordance with regulations that have been jointly determined. (Nurul, 2019). At the stage of distributing the assets of the land bank, it consists of two stages, namely the provision and distribution of land. Land provision is a distribution for the public interest, social and equitable distribution of activities for a prosperous economy, infrastructure, land consolidation needs and also agrarian reform. In distributing land to the public must be based on applicable regulations so that it is not misused for parties who have commercial needs, namely residents in this study are flat units for foreign nationals. (Puspita, 2021).

In this paper, the author suggests that if to create an equitable distribution of land, foreign citizens should not have ownership rights to flat units, especially to flats built on state land. Because basically State land should be utilized as much as possible for the benefit of the State. In the future, Indonesia should be able to imitate systems in other countries that use a rental system or use rights with a certain time limit so that investment objectives are achieved and Indonesian citizens are not harmed by the ownership of flats by foreign citizens.

## ***Conclusion***

Based on the discussion above, the authors draw conclusions, namely, firstly, the suitability of the policy on property rights of flats by foreign citizens with the principle of horizontal separation is in principle appropriate because the principle of horizontal separation is the principle that separates land ownership rights from objects or buildings on it, Thus, this horizontal principle does not regulate that ownership is owned by foreigners or by Indonesians, therefore the principle of horizontal separation focuses more on the status of objects on the land, but the regulation of the mechanism for ownership of flats by foreign citizens must be considered. so as not to harm Indonesian citizens, especially poor citizens. Second, the suitability of ownership of flats for foreign nationals as regulated by the job creation law with the principle of inappropriate distribution because the work copyright law stipulates that foreign

nationals can have ownership rights to flat units, meanwhile flat units can be built on State land, and where State land should be utilized and privileged in the best possible way for the benefit of Indonesian citizens, especially for the poor and for residents in densely populated areas, for example Jakarta, only 45.02% of the people have housing. the opportunity for foreign citizens to own an apartment unit, it is not in accordance with the principle of equitable distribution of land, foreign citizens should only have the right to use or the right to rent, as in the fair arrangement of other countries.

Based on the discussion above, the authors provide suggestions, namely as follows, firstly, for the Indonesian government and the Indonesian parliament as legislators to review the policy on ownership of flats by foreign citizens, whether the policy is in line with the principle of equitable distribution of land. or not, and regulation on ownership of flats by foreign nationals must be regulated with clear provisions and mechanisms so as not to harm the interests of Indonesian citizens.

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