

IMPLEMENTATION OF THE MINIMUM PRICE SETTING FOR FOREIGN PURCHASES BY FOREIGNERS

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ABSTRACT

Globalization has resulted in the increased mobility of foreigners to Indonesia. The foreigner has objectives such as investing, carrying out business needs, and carrying out tasks, then hierarchically and systematically based on the delegation of Law of the Republic of Indonesia Number 5 of 1960 Article 42 letter b to form Government Regulation of the Republic of Indonesia Number 103 of 2015. Substantive of this implementing regulation it will not be effective if it is seen from the substance of the validity of a mandatory norm, which means that its binding power is still appropriate and has been violated by foreigners and skeptically, this norm creates confusion in terms of practical implementation and in technical implementation in the form of deeds as the basis for There is an agreement when the form of deed required in connection with the extension of the ownership of a single house on land with usufructuary rights to the right of ownership is not clearly regulated so that the law cannot function the law to regulate changes.

Keywords: Implementation, Arrangement, Residential Purchase, Foreigner.

INTRODUCTION

The high enthusiasm of foreigners in terms of visiting and even settling in Indonesia is of two types, namely foreigners staying temporarily and foreigners residing in Indonesia. The regulation regarding the residence of foreigners in Indonesia is regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as Agrarian Regulations Law) Article 42 letter b, namely "Those who can have use rights are foreigners who are domiciled in Indonesia"(Maria, 2009). Globalization is currently increasing the mobility of foreigners to Indonesia. The foreigner has goals such as investing, carrying out business needs and carrying out duties from his country such as an Ambassador, where residence or shelter is a housing requirement. For the sake of implementing and practicing as well as legal certainty for foreigners in the need of boards, Government Regulation Number 103 of 2015 concerning Ownership of Residential or Residential Houses by Foreigners Domiciled in Indonesia (hereinafter referred to as Government regulations 103/2015) aims to support development and acceleration in the field. economy and cooperation.

Foreigners referred to in Article 1 number 1 Government regulations 103/2015, namely "foreigners domiciled in Indonesia who are hereafter. called a stranger. is a person who is not an Indonesian citizen whose existence provides benefits, does business, works, or invests in Indonesia ". The need for boards must be based on the Right to Use as stated in Article 4 Government regulations 103/2015. Regarding property objects for foreigners contained in Government regulations 103/2015, there are only 2 (two) types, namely single houses and apartment units.

The definition of the Right to Use is contained in Article 41 paragraph (1) of the Agrarian Regulations Law, which is "The right to use is the right to use and/or collect proceeds from land that is directly controlled by the State or land owned by another person, which gives the authority and obligations determined in the decision to grant it by the official. who is authorized to give it or in an agreement with the owner of the land, which is not a lease agreement or land management agreement, everything as long as it does not conflict with the soul and the provisions of this Law ". Land that can be granted with a Use

Right is like a. State Land; b. Land Management Rights; c. Freehold Land”.

Foreigners in granting usufructuary rights for a single house and Sarusun must purchase new ones that have been regulated in Ministerial Regulation 13/2016, with a maximum period of 80 years (eighty years) by means of new purchases purchased directly from the developer or landowner as regulated in the Ministerial Regulation 13/2016 regarding the minimum prices listed in the attachment (Mukti, et all. 2010). Judging from an inseparable attachment to Ministerial Regulation 13/2016 regarding the minimum price of a Single House and Sarusun and responding to the skepticism of the author of fraud committed between owners and buyers by foreigners due to unregulated sanctions that cause losses to the State such as evasion of Sales Tax Buy. Based on the aforementioned problems, it is important to conduct an assessment of "Implementation Arrangements Regarding the Minimum Price for Housing Purchase by Foreigners".

This study has the aim of knowing, understanding and analyzing the regulatory provisions regarding the minimum price for residential purchases by foreigners as well as to find out, understand and analyze the technical implementation of the minimum price for residential purchases by foreigners.

RESEARCH DESIGN

The type of research in this paper uses normative legal research, which departs from the Ministerial Regulation 13/2016 related to vacancies in technical implementation and void in sanctioning regulations. This research will use a statute approach; laws and regulations are the focal points of the research and because of the nature of the law which has the following characteristics, it means that the legal norms contained in it are logically related to one another. All-inclusive, meaning that the collection of legal norms is sufficient to accommodate existing legal

problems so that there is no legal vacuum. Systematic, namely that in addition to being linked to one another, the legal norms are arranged hierarchically.

Sources of legal materials used in this paper are obtained through primary legal materials, namely legal materials that have binding power, in other words, legal principles and principles such as Agrarian Regulations Law; Law Number 12 Year 2011 Concerning the Formation of Legislative Regulations (hereinafter referred to as the Formation of Invitation Laws); Government regulations 103/2015; Ministerial Regulation 13/2016. Secondary legal materials, namely legal materials sourced from legal books and articles that have relevance to the problem under study. Tertiary legal materials are non-legal materials such as dictionaries, encyclopedias, and others.

RESULTS AND DISCUSSION

1. Arrangements Regarding Minimum Price for Residential Purchases by Foreigners

“Stufentheorie stated by Hans Kelsen that "The unity of these norms are constituted by the fact that the creation of one norm-the lower one-is determined by another-the higher-the creation of which is determined by a still higher norm, and this *regressus* is terminated by a highest, " (Hans Kelsen, 1945) which means the unity of these norms is shown by the fact that the formation of one norm, namely the lower norm is determined by another higher norm and that *regressus* (a series of formation processes law) is terminated by the highest basic norm. The Formation of Invitation Laws which adheres to the Stufentheorie in Article 8 paragraph (2) explicitly states that the existence of the Ministerial Regulation has binding legal force as long as it is ordered by higher legislation or is formed based on authority.

According to Bagir Manan, in order for the formation of law to produce a strong and quality law, there are three bases for drafting a law: "juridical basis

(*juridische gelding*); Sociological basis (*sociologische gelding*); Philosophical foundation" (Yuliandri, 2013). The importance of the three basic elements of the formation of the law is that the law that is formed has legal validity and is able to be effective because it can or will be accepted by the community fairly, and is valid for a long time.

The juridical basis in the formulation of each law must be placed in the preamble section considering. The legal basis contains the basis for the authority to make statutory regulations that order the making of these statutory regulations, the legal basis is a juridical basis for the formation of these statutory regulations (Maria, 2007). A basis in statutory regulations, in this case, is not based on juridical whether the law is valid, in this case, the formation of statutory regulations begins with a consideration bearing in mind that it contains: (a) Basic authority for the formation of Legislation; and (b) Legislation which orders the formation of Legislation

Norms do not stand alone but are a unity both separately in regulation and in general to specific. The Indonesian legal culture that is predominantly influenced by Kelsen's pure legal theory is legal norms or a legal system of legal norms. "Legitimate norms or norms system are norms that originate from a higher norm and can be traced back to the basic norms from which they are derived, formed in a certain way or by certain rules, determined according to certain procedures (Mahfud, 2013).

Moving on from the Stufentheorie put forward by Hans Kelsen and the Formation of Invitation Laws, looking at the hierarchy of attachments to Ministerial Regulation 13/2016, namely:

1. The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3), namely "The land and water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people"

2. Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations Article 42 letter b, namely "Those who can have use rights are foreigners who are domiciled in Indonesia".
3. Government regulations 103/2015 Article 11, namely "Further provisions regarding the procedures for granting, releasing, or transferring rights to ownership of a residential or residential house by foreigners are regulated by a ministerial regulation/head of the agency that administers government affairs in the agrarian sector".
4. Ministerial Regulation 13/2016 Article 2 paragraph (2), namely "Purchasing a single house or apartment unit as referred to in paragraph (1), is a single house or apartment unit with a minimum price as stated in the Attachment which is an integral part of the Regulation. This Minister".
5. Attachment to Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 13 of 2016 concerning Procedures for Granting, Releasing, or Transfer of Rights to Ownership of Houses or Dwellings by Foreigners Domiciled in Indonesia.

2. Technical Implementation Regarding Minimum Price for Residential Purchase by Foreigners

Law as a relationship will provide obligations and rights that have been determined by statutory regulations, "so that if it is violated it will result in the offender being sued in court" (Soedjono, 2001). Every legal norm automatically contains provisions regarding the rights and obligations of legal subjects in the course of law. Law as a social control from the government (law is governmental

social control), as social rules and processes that try to encourage behavior, either useful or prevent bad behavior. On the other hand, "social control is a network or comprehensive rules and processes that bring legal consequences to certain behaviors, for example, general rules for acts against the law" (Lawrence, 2013). There is no other way to understand the legal system than to look at legal behavior that is influenced by the rules of government decrees or laws issued by competent officials. If someone behaves in a particular way, it is because of the law or because of the actions of the government or other officials or in the legal system.

Whether norms are effective or not can be seen from the validity of a norm. "In conducting the validity test, empirical work procedures are also used. According to Kelsen, normative legal research is a study of legal norms whose norms are mandatory (Wyasa, 2015). Legal validity means that legal norms are binding, that people must act in accordance with what is required by legal norms, that people must obey and apply legal norms. As stated in Article 7 paragraph (2) Government regulations 103/2015 have consequences for technical implementation in the form of deeds as the basis for an agreement related to the extension. Problems arise when the form of deed required in connection with the extension of single house ownership overlaid with usufructuary rights is not clearly regulated in the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning the form of a deed (Jimly, 2014).

Legal norms remain valid as long as these norms are part of a valid legal system. In other words, Hans Kelsen requires a reciprocal relationship between the validity and effectiveness of a rule of law. Before it becomes effective, a legal norm must first be valid, because if a rule of law is invalid then the law cannot be applied, so that the rule of law is never effective. But on the contrary that

effectiveness is an absolute requirement for a valid rule of law. As for a rule of law to be effective, it must meet two main requirements, namely: (1) the rule of law must be applicable; and (2) the rule of law must be acceptable to society (Munir, 2013).

Legal validity is used to assess laws and regulations based on indicators of the validity of legal obligations and sanctions. Legal norms that have no power in the form of sanctions, can the law be enforced and authoritative? According to Hart "... law as consists of orders backed by treaties of sanctions" (Hart, 1961). According to Jimly Asshiddiqie, it is "a process of undertaking an effort to establish or function real legal norms as a guideline for behavior in traffic or community legal relations in the life of the nation and state" (Mahfud, 2013). Sanctions are given by the legal system with the intention of causing certain actions which are deemed desired by the legislators. Legal sanctions have the character of being coercive.

The provisions for sanctions regarding the minimum price for the purchase of a dwelling by a foreigner domiciled in Indonesia are regulated in Ministerial Regulation 13/2016 Article 2 paragraph (2), namely "Purchasing a single house or apartment unit as referred to in paragraph (1), is a single house or unit of the house. Stacking at a minimum price as listed in the Appendix which is an integral part of this Ministerial Regulation ". In brief, the skepticism regarding the minimum price for housing purchases by foreigners who are domiciled in Indonesia is prohibited by foreigners. Juridically, no sanctions can be given. Due to the absence of sanctions arrangements that result in legal effectiveness not being fulfilled in achieving the targets that have been set, therefore Ministerial Regulation 13/2016 cannot function the law to organize changes.

CONCLUSIONS

Based on the results of the research conducted, the conclusions that can be put forward are:

1. The legal basis regarding the minimum purchase price for housing by foreigners who are domiciled in Indonesia is regulated in the Government Regulation of the Republic of Indonesia Number 103 of 2015 concerning Ownership of Residential Houses or Occupations by Foreigners Domiciled in Indonesia which is carried out by the government must be hierarchically and systematically based on delegation. Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations Article 42 letter b.
2. The provisions of sanctions regarding the minimum price for the purchase of

a residence by foreigners domiciled in Indonesia will not be effective if viewed from the substance of the validity of a mandatory norm which means the binding power of Government Regulation of the Republic of Indonesia Number 103 of 2015 concerning Ownership of Residential or Occupancy Houses. Foreigners domiciled in Indonesia deserve to be violated by foreigners and skeptically this norm creates confusion in terms of practical implementation and in technical implementation in the form of deeds as the basis for an agreement when the form of deed is required in connection with the extension of single house ownership in land use rights over ownership rights are not clearly regulated so that the law cannot function the law to organize changes.

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