

# Land Policy Proportion in Singapore, Malaysia and Indonesia through the case of Subsidized Flat for Low-Medium-Income in Kebon Kacang, Jakarta, Indonesia

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## ABSTRACT

Provision of housing for low-medium-income people (LMIP) in Indonesia is still constrained between policies, its implementation and the communal land tenure security for subsidized housing residents. The discussion on this article focuses on the policy of the Indonesian Government in the 1980s to provide housing for LMIP through slum communities' land acquisition, which was then used in building subsidized flats in Kebon Kacang (RSKK). RSKK was built by the state-run National Housing Agency (NHA). Over time, the physical building of RSKK needs to be revitalized. The revitalization policy will change the designation of the targeted group and the function of the State land. In the 1980s, the State land was intended for LMIP. Nevertheless, the revitalization plan will likely alter the land allotment policy. The land allotment policy will be modified to the discourse of mixed housing between luxury apartments and medium commercial apartments. The changing policy is driven because of the strategic location of the RSKK in the center of the Business District in Central Jakarta. It is located behind Thamrin Street in Central Jakarta. The very high tax value and selling price have tempted the NHA as the holder of the State's communal land ownership, which is registered under the State Land Management Right [the Indonesian land registration system recorded as HPL], to solicit private enterprise investors in order to revitalize the construction of RSKK. This temptation forced the NHA to evaluate the land allotment policy from its non-profit land function to a high-profit land function or commercializing the State land [HPL] and forgetting its obligation to provide land tenure security to RSKK's owners, who had bought their housing units through installments. It will discuss the difference between the NHA's policy and Singapore's housing sector, which is a 'unique hybrid of public-private elements that have worked for the city-state' [Phan, 2007] in providing housing for the LMIP. This article will highlight the gap differences between Singapore and Indonesia's policy in the land tenure security for LMIP. In contrast with Singapore's practice, furthermore, this article is depicting a similar practice between the Malaysian Government and the Indonesian Government on allocating housing for the LMIP. Which model provides more protection to the LMIP?

*Keyword: Communal Land Tenure Security, Revitalization of Subsidized Apartment, Low-Medium Income Housing*

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## 1. FOREWORD

A few years after Singapore<sup>2</sup>, Indonesia and Malaysia<sup>3</sup> gained their independence, the countries had problems regarding slums and inadequate housing. The conditions of the village were unorganized and unhealthy. The arrangement of villages and cities was not properly organized because it did not comply with health and environmental standards. Inadequate housing and settlement conditions greatly affect the social and economic conditions of the country<sup>4</sup> and its people<sup>5</sup>. The similar conditions in the three countries occurred between 1959 and 1980s. However, the three countries have their own method of dealing with the problems of improving their villages and housing conditions. The arrangement of slums and the provision of housing for low-medium-income people [LMIP] in Singapore are the best models and are quite successful in overcoming these problems<sup>6</sup>. Meanwhile, Indonesia and Malaysia have similarities in overcoming these problems. The means in which the three countries solve land problems, provide healthy housing for the poor, guarantee the ownership of land and buildings that they have paid for will be discussed further in this paper. The discussion will start from Singapore as the best example. The discussion will continue

with a few illustrations of the similarity of land policy, land acquisition in the context of managing slums, and providing housing for the LMIP in Malaysia<sup>7</sup> and Indonesia. The main discussion in this study reviews policies on improving slums and providing houses for the poor in Kebon Kacang, Indonesia.

The Singapore government has succeeded in turning slums and informal settlements into public housing<sup>8</sup> that are equipped with social, economic, hygiene, security, water and electricity infrastructure for its owners. This success was achieved after the Singapore Government enacted the Singapore State Land Regulation in 1968 concerning land acquisition procedures<sup>9</sup>. The change in the city arrangement is carried out through community land acquisition at a reasonable price. This land acquisition gives the government legitimacy to change the status of community land to state land. Moreover, the state land is leased to development agencies on a lease basis to the government. This rental system lasts for a period of 99 years. In the process of land acquisition, the Singapore Government guarantees its citizens the right to housing and the ease of financial assistance to their citizens so that those who cannot afford to buy housing can pay with a payment scheme according to

<sup>2</sup> Sock Yong PHANG, Kyunghwan KIM, Singapore's Housing Policies: 1960-2013, Chapter 1, Economic Development: Industrial and Financial Policy, Research Collection School of Economic, Institutional Knowledge at Singapore Management University, World Bank Institute, 11-2013, p-124

<sup>3</sup> Teck-Hong Tan, Sustainability and Housing Provision in Malaysia, *Journal of Strategic Innovation and Sustainability*, Vol 7 (1) 2011, P-63.

<sup>4</sup> Sock Yong PHANG, Housing Policy, Wealth Formation and the Singapore Economy, Research Collection School of Economic, Institutional Knowledge at Singapore Management University, World Bank Institute, 7-2001.

<sup>5</sup> Aslina Nasir, Lazim Abdullah, A Decade Overview Of Residential Property: A Case Study Of Housing Constraints, *International Journal of*

*Engineering Researches and Management Studies*, Nasir, 1(1), December 2014, p-26.

<sup>6</sup> Belinda Yuen, Squatters no More: Singapore Social Housing, inside Land and Urban Policies for Poverty Reduction, Edited by Mila Freire, Ricardo Lima, Dean Cira, Bruce Ferguson, Christine Kessides,

Jose Aroudo Mota, Diana Motta, Vol 2, Proceedings of the Third International Urban Research Symposium held in Brasilia April 2005, p-269.

<sup>7</sup> Besar, J. A., Fauzi, R., & Ghazali, A. S. (2012). Penilaian awal impak pelaksanaan Dasar Perumahan Negara terhadap sektor perumahan di Kuala Lumpur. *GEOGRAFIA OnlineTM Malaysia Journal of Society and Space*, 8(6), 90–108.

<sup>8</sup> *Ibid* Sock (2013), p-131.

<sup>9</sup> *Ibid* Sock (2013), p-126.

their abilities and make small installments<sup>10</sup>.

Throughout the 99 years of the state land leasing system, the Government provides guaranteed land rights and adequate housing to all its inhabitants during their life cycle. Guaranteed right to adequate housing is given to every family that is Singapore citizens. This housing tenure security system is given consistently and unrelated to and regardless of who the Singapore state leader is.

This policy has been proven successful by giving 90% of Singaporeans home ownership<sup>11</sup> and providing fair opportunities for all residents of informal settlements to enter into a healthier and more secure housing system<sup>12</sup>.

Public settlements in Singapore cities are built by the House Development Board (HDB), the public housing authority and the legal counsel under the Ministry of National Development that is responsible for all public housing development in Singapore. HDB is a unique, consistent and integrated government housing policy that provides housing ownership to all citizens through regulations. The social security guarantee policy for housing is one of the government's priorities, which is supported by the financial system through state financial institutions, construction, distribution, post-occupancy management and the process of revitalizing public housing when it is no longer habitable. Such actions are carried out by the HDB<sup>13</sup>.

The public housing system implemented by HDB, where every citizen

of Singapore can own a house, is called by Phang, [2007] as the "public-private hybrid system". Everything is controlled by the state when they "regulate, deregulate and regulate the sector with changes in socio-economic as well as market conditions"<sup>14</sup>. This system has proven to be advantageous when viewed from the welfare approach to public housing.

The development of the housing system in Singapore is implemented based on careful and consistent economic management by the Singapore Government since its independence and up until 2020<sup>15</sup>. Changes in leadership in Singapore have not changed its main policy of guaranteeing housing ownership to its citizens. Although this housing system has experienced slight adjustments several times to the socio-economic conditions of the country, the purpose of providing ownership and guarantees to the Singaporean community has not changed.

One of the policies that were adopted in the development of the housing system is the management of land ownership in Singapore within the area of 716 square kilometers by "the prevalence of land ownership and infrastructure by the government as a method of land ownership" [PHANG 2007]. Although 90% of Singapore's territory is owned by the State, the Singapore Government gives the remaining land area to private land ownership to build housing through land acquisition mechanisms.

Land ownership in Singapore is controlled by the State, with HDB being the

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<sup>10</sup> Tai-Chee Wong, Adriel Yap, From universal public housing to meeting the increasing aspiration for private housing in Singapore, *Habitat International* 27 (2003) 361–380

<sup>11</sup> Sock Yong PHANG, *The Singapore Model of Housing and The Welfare State*, Research Collection School of Economic, Institutional Knowledge at Singapore Management University, 2007, p 15.

<sup>12</sup> Sock-Yong Phang, Matthias Helble, *Housing Policies in Singapore*, ADBI Working Paper Series, No. 559 March 2016, Asian Development Bank Institute.

<sup>13</sup> Sock-Yong PHANG, *Housing Policy, Wealth Formation and the Singapore Economy*, Published in *Housing Studies*, Volume 16, Issue 4, 2001, Pages 443-460.

<sup>14</sup> Richard, Groves, Alan Murie and Christopher Watson, *Housing and the New Welfare State: Perspectives from East Asia and Europe*, Centre for Urban and Regional Studies, University of Birmingham, August 2006, p-1980.

<sup>15</sup> Lee, K. Y., *From Third World to First: The Singapore Story 1965-2000*, Singapore, Press Holdings, 2000.

authority to use land and sell apartment units with land tenure for 90 years. This ownership system has brought success to Singapore in overcoming land difficulties to provide housing and guarantee every citizen to get a house.

The management system and strategy in Singapore are inversely proportional to the systems in Indonesia and Malaysia in terms of the arrangement of slums and the housing provision for the middle and lower-income people. The situation of slum arrangement in Kebon Kacang that occurred in Indonesia has similarities with Malaysia, where each country has a diversity of land statuses. In both countries, most communities still have the status of customary land. The appreciation towards people in Indonesia and Malaysia<sup>16</sup> has similarities to the value of the land, which is communalistic in its religiosity. Similarities between the two countries occur in slums, which as always grown alongside population growth and uneven economic growth in each region<sup>17</sup>.

Indonesia and Malaysia<sup>18</sup> are still experiencing difficulties in providing adequate housing assurances for their citizens. Although in these two countries, Indonesia and Malaysia<sup>19</sup>, ensure the right to adequate housing to their citizens in their constitutions, they face difficulties as a result of limited availability of land to build adequate housing. If the governments of Indonesia and Malaysia will conduct land acquisition, the main obstacle is the determination of land prices that are appropriate for their owners. Impartiality to the middle and lower classes, especially the

poor in these two countries, is often a major obstacle to overcoming the problem of housing and slum settlement arrangements.

As compared between Indonesia and Malaysia with Singapore in regulating land, land acquisition and ensuring every citizen to acquire a decent home, Indonesia and Malaysia still need improvement. Particularly, Indonesia needs a multi-sector approach, which consists of (1) population limitation policy; (2) availability of employments; (3) education improvement; and (4) social security on housing ownership. This article will discuss improvements in land policy, land acquisition and government assurances that could be made for adequate and healthy housing.

Moreover, the improvement needs to be done by Indonesia and Malaysia<sup>20</sup> in order to consistently implement their land policies. Both countries' land laws recognize the diversity of land rights, including customary land. However, Malaysia's "National Land Code 1965" law is based on the Torrens system where land registration is the most important process. Mere occupations of land without proper registration would not be recognized even though such occupations have occurred since "immemorial time"<sup>21</sup>. Similarly, Indonesia also applies land registration and recognition of the diversity of land rights through the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

Referring to Sufian<sup>22</sup> regarding the condition of land policy in Malaysia, "the same idea was introduced in Malaysia

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<sup>16</sup> Sufian A. and Mohamad N. A., *Squatters And Affordable Houses In Urban Areas: Law And Policy In Malaysia*, Theoretical and Empirical Researches in Urban Management, Number 4 (13)/November 2009.

<sup>17</sup> B Bakhtyar, A Zaharim, K Sopian, S Moghimi. *Housing for Poor People: A Review on Low Cost Housing Process in Malaysia*, WSEAS Transactions on Environment and Development, Issue 2, Vol 9, April 2013.

<sup>18</sup> Teck-Hong Tan, *Sunway University: Sustainability and Housing Provision in Malaysia*,

*Strategic Innovation and Sustainability*, Vol. 7 (1), 2011.

<sup>19</sup> *Ibid* Teck.

<sup>20</sup> Friel-Simon and Khoo, K. K. (1976). *The squatters as a problem to urban development-a historical perspective*. Paper presented at the 3<sup>rd</sup> Convention Malaysian Economic Association. Penang.

<sup>21</sup> *Ibid* Sufian.

<sup>22</sup> *Ibid* Sufian.

where land now belongs to the state. Ownership of land is only recognized through land registration. Hence, whoever occupies state land without authorization is considered as an illegal occupier and may be prosecuted as provided in section 425 of the National Land Code 1965". The same policy is applied in Indonesia. All landowners can be recognized for their ownership and utilization of their land if they register the tenure and utilization of their land. Land owners who do not register their land are considered free state land. Those land users who make use of free state land without authorization from the state can be seized and be convicted based on the Law of the Republic of Indonesia Number 1 of 1961 concerning Prohibition of Land Users without Permit from of the Owner or Proxies (Law No 51/Prp/1960). This law weakens the position of the owner as it does not provide legal protection and recognize land ownership of the diverse community.

Recognition of the community's land must be followed up with concrete and factual actions in the process of land acquisition for all purposes. This consistency is also needed in the provision of equitable, fair, measured and consistent compensation for each type of land rights, including customary land<sup>23</sup> so that land and building owners have the financial ability to obtain a decent and healthy house<sup>24</sup>. This condition will directly reduce the potential for the emergence of new slum areas as a residence for victims of forced evictions who do not get proper compensation.

## **2. SLUM UPGRADING AND THE CONSTRUCTION OF SUBSIDIZED FLATS IN KEBON KACANG, INDONESIA**

Since the 1960s, the Government of Indonesia has been trying to change the city of Jakarta's densely populated, unhealthy and poorly organized city. One such effort includes the village structuring program in Jakarta called the Muhammad Husni Thamrin [MHT], which is conducted under Governor Ali Sadikin in 1969 - 1979<sup>25</sup>. This program is assessed by several neighboring countries and the World Bank as a slum upgrading program that has succeeded in changing several villages' conditions. It changed housing for poor communities turned into a healthier and orderly village, which used to be unhealthy and disorganized slums that have no toilets and drainage. The MHT program was considered to have succeeded in improving social, economic and environmental aspects through land consolidation and the active participation of villagers<sup>26</sup>.

The success of the MHT program is because the program was implemented by adjusting social, economic, cultural, ethnic and religious conditions in each village. The entire MHT program was applied with participatory principles. Since this program was planned and carried out by villagers, the local government acted as the villagers' working partners in its implementation. Local governments and villagers have the same awareness and value of the importance of structuring slums and providing assurance to their citizens to provide adequate and healthy housing<sup>27</sup>.

The Indonesian government's efforts to change the slums continued in the 1980s

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<sup>23</sup> Simon But and Tim Lindsey, *Indonesian Law*, Oxford, the 1<sup>st</sup> Ed, 2018, p-133.

<sup>24</sup> Syafiee Shuid. *Low Medium Cost Housing In Malaysia: Issues And Challenges*. Department of Urban and Regional Planning Kulliyyah of Architecture and Environmental Design International Islamic University Malaysia.

<sup>25</sup> Vera W. S. Soemarwi & Kristian Feran, *Menyisir Kebijakan Perumahan Bagi Masyarakat*

*Berpenghasilan Rendah di Jakarta, Ciliwung Merdeka*, 2019, p-6.

<sup>26</sup> Darrundono and Pik Mulyadi, *Kampung Improvement Program, Jakarta, Indonesia*, Jakarta City Government, Ali Sadikin, The Aga Khan Award for Architecture, 1974.

<sup>27</sup> *Ibid* Darrundono.

in the Tanah Abang and Kebon Kacang areas in Central Jakarta. The social conditions of Kebon Kacang residents were urban village residents from various cities around Jakarta. They came to Jakarta to look for a better economic life. The economic condition of the Kebon Kacang community ranged from middle to lower-income communities who mostly worked in the informal sector. Kebon Kacang was a densely populated area with unhealthy and dirty environmental conditions as well as poor sanitation standards. The environmental conditions were very extreme when compared to the city planning on Thamrin Street with the zoning of private offices, government and country representative offices and five-star hotels, especially since the location of Kebon Kacang is located right behind Thamrin Street. This striking contrast pushed the Government to run a Kebon Kacang slum upgrading program and provide housing in the form of flats for the people in Kebon Kacang village and other poor communities. At that time, the Kebon Kacang land was owned by the local community, with around 88% of the citizens having evidence of ownership of customary land while only 12% of the citizens had land rights certificates<sup>28</sup>. For the sake of the implementation of the government's Kebon Kacang Flats (RSKK)

development program, the government was procuring community land at a price that was relatively little below the market price. The land price decisions are based on proof of ownership held by citizens. However, Lea's research found that the process of determining the amount of compensation and giving compensation was not transparent and manipulative, where there were irregularities in the process of giving compensation. For example, the Government provides compensation to people who no longer live in Kebon Kacang, but still have an identity card of Kebon Kacang, Jakarta. For the Government, "receiving compensation equals approving the project". [Lea Jellinek, 1994]

After 736 families made up of 3.500 people<sup>29</sup> received compensation for their land, around 80% of Kebon Kacang residents returned to their hometown outside Jakarta while others moved to Tangerang, Depok, Bogor and Java. The remaining 20% of Kebon Kacang residents<sup>30</sup> chose to be placed in temporary shelters (huntara) built by the government before moving to RSKK. The main reason<sup>31</sup> for the reluctance of 80% of residents to stay in the RSKK was for economic reasons. They worry that they would not be able to pay the monthly installments for the RSKK. Some residents worked in the

<sup>28</sup> Lea Jellinek, *Seperti Roda Berputar: Perubahan Sosial Sebuah Kampung di Jakarta*, Jakarta: LP3ES, 1994, p-183.

<sup>29</sup> Lea Jellinek, *Seperti Roda Berputar: Perubahan Sosial Sebuah Kampung di Jakarta*, Jakarta: LP3ES, 1994, p-172.

<sup>30</sup> *Ibid* Lea, "At the beginning 160 families finally took the flats. [page 196] However, due to the physical conditions in the temporary accommodation which was very bad and the people's doubts about the government's commitment to provide adequate housing for them, most villagers who initially decided to take the flat, then exchanged their rights over the flats with places and units. units to trade on the edge of the city. In the end there were only 146 families who moved into flats, not including the original 160 families. Then in November 1986, an estimated 15% had left the flats. [page 198].

<sup>31</sup> *Ibid* Lea, there were two categories of housing preferences that provided by Perumnas. That were: 1<sup>st</sup> category: residents who took housing in the Perumnas core housing. 200 families who did not take a flat, occupied houses in 3 Perumnas core housing locations, which were located 15-20 Km to the south, east, or west of Jakarta, such as in Depok and Tangerang [page 199]. 2<sup>nd</sup> Category: residents who resettle themselves independently. More than half of the households in Kampung Kebon Kacang settled themselves. Most buy land or dilapidated houses that are marketed in the suburbs or choose to live with relatives. They rebuilt their homes everywhere, using building materials from their displaced homes, and bought boards and tiles from adjacent houses in Kebon Kacang. Wealthier minorities occupy villages near the city center similar to Kebon Kacang, which are actually vulnerable to eviction. [page 200].

informal sector as a chain of economic support for the Kebon Kacang village. They were worried that they would lose their livelihoods if they lived in the RSKK because the RSKK residents no longer needed them. These people worked as traveling water vendors, porters, laundry workers and domestic helpers, among other jobs. People who work in the informal sector have neither a fixed income, social security nor housing loan assistance from the government because they do not meet the requirements set by the bank (bankable). The government has not provided a specific policy for the informal sector community that would allow them to continue to live and own apartment units or landed houses. This description is a general policy in the field of housing concerning accessibility for the poor working in the informal sector with income below the Regional Minimum Wage (UMR) limit. When compared with the arrangement of slum villages in Singapore, the slum upgrading policy in Indonesia has not been able to guarantee all affected villagers to get decent housing in a new place, such as the RSKK. This inability was caused by housing credit schemes that had not been able to reach workers in the informal sector and unclear information about the housing program in the RSKK for all residents in Kebon Kacang. Meanwhile, all the land in the Kebon Kacang area has been acquired by the government.

The total community land in Kebon Kacang that was freed up was 17,997 square meters, which has been paid for by the Government and has been converted to state land (with Land Management

Rights/HPL). The Government also issued proof of ownership in the Certificates of HPL (SHPL) under the management of the National Housing Development General Company (Perumnas)<sup>32</sup>, which is an Indonesian state-owned enterprise (BUMN). The Government granted HPL to Perumnas because it was a special task force of BUMN that was tasked with providing adequate housing for the middle and lower economic classes<sup>33</sup>. The purpose of the state issuing SHPL is interpreted as the right to control the state land, in which the authority to implement is partially delegated to the right holder<sup>34</sup>, namely the state apparatus<sup>35</sup>. Boedi Harsono<sup>36</sup> and Maria Sumardjono<sup>37</sup> agreed with such a delegation system. The two experts restricted management rights in the function of public authority and it would be incorrect to equate them with "rights" to land in the context of "private" functions stipulated in Article 16 of Agrarian Law. Boedi Harsono emphasized that the main objective was to provide management rights; therefore, the land could be used by other parties who needed it, which in this case is the RSKK owners. However, Boedi argued that the management right holder has the authority to use the land. In using the state land that is directly controlled by the state, SHPL holders must use it in accordance with the principles set out in Article 33 (3) of the 1945 the Republic of Indonesia Constitution for the welfare of its people<sup>38</sup>. SHPL is processed at the National Land Agency by adhering to these principles

Perumnas built the RSKK during the HPL certification process. The construction

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<sup>32</sup> Certificate of Management Right Number 1/Kebon Kacang issued by the Head of the Central Jakarta Land Office on April 12, 1991, the area of land acquired was 17,997 square meters.

<sup>33</sup> Suparwoko, *Peningkatan Kapasitas Perumahan Swadaya di Indonesia*, total media, 2013.

<sup>34</sup> Santoso, *Eksistensi Hak Pengelolaan dalam Hukum Tanah Nasional*, 279.

<sup>35</sup> Urip Santoso. *Eksistensi Hak Pengelolaan dalam Hukum Tanah Nasional*. *Mimbar Hukum* Volume 24. Nomor 2. Juni 2012. Halaman 187 – 375.

<sup>36</sup> Boedi Harsono, 2007. *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya*. Djambatan, Jakarta.

<sup>37</sup> Maria S. W. Sumardjono. 2008. *Tanah dalam Perspektif Hak Ekonomi Sosial dan Budaya*. Kompas. Jakarta.

<sup>38</sup> *Ibid* Simon, p-128.

was completed in 1983 on an area of 1.6 hectares consisting of 8 blocks with a total of 632 units. The 632 units were sold by Perumnas to poor residents in Kebon Kacang and surrounding areas. On average, RSKK owners began occupying RSKK in 1984. Of the 632 units, around 146 units<sup>39</sup> were purchased in installments by 20% of residents of those displaced in Kebon Kacang. The remaining 486 units were sold by Perumnas. To determine prospective buyers, officers at Perumnas applied a system based on how closely connected were the individuals with the authorities. According to Ward Berenschot and Gerry van Klinken<sup>40</sup>, this relationship system is called "informality (personal connections to deal with state institutions)". Perumnas did not sell all 632 RSKK units. Perumnas left about 20 units under its control<sup>41</sup>. As RSKK was built and was first inhabited, Indonesia did not yet have regulations regarding flats (Rusun). It was only until 1985 that the country had passed the Law on Flats (Law Number 16 of 1985 or hereinafter referred to as the old Condominium Law).

The old Condominium Law secures and protects ownership rights of individual flat units, common sections of the housing, common facilities and the common land of RSKK. The owners at the RSKK also share ownerships of individual housing unit and land at the RSKK. The old Condominium Law requires Perumnas to first help the community to prepare for the formation of the Kebon Kacang Flats Owners Association (PPRSKK) as a legal entity authorized to act on behalf of RSKK owners and residents in managing matters regarding ownership, occupancy and management. All the joint interests of the owners and residents are managed by the PPRSKK. Perumnas's assistance in preparation for the formation was promptly required since all units have been occupied. Perumnas completed this first obligation in 2002<sup>42</sup>. During that time, Perumnas carried out all management and superintendence. Perumnas' second obligation was to change the land status from the management right (SHPL) to a Certificate of Building Use Rights (SHGB) based on the agreement of lease-to-use or lease agreement to PPRSKK. Such change aims to support the

<sup>39</sup> *Ibid* Lea, After completion of the RSKK construction (1984), only 146 families or 19.84% of the total affected family/household, which eventually occupy the flats. Or 24.3% of the total residential units in Kebon Kacang Flats that are owned by residents of Kampung Kebon Kacang. In November, an estimated 15% had left the flats. [page 198]. In 1995 the number of RSKK residents from Kebon Kacang has decreased around 102 families or 13.86% of the total affected families/households lived in the Kebon Kacang; see also Wisnu Subagijo and Johny Siregar, *Social Adaptation Processes and Strategies for Flats Society (Iilir Barat Flats, Palembang and Kebon Kacang Flats, Jakarta)*, Indonesian Ministry of Education and Culture, 1995, page 73, the figure is 17% of the total residential units in Kebon Kacang Flats that are still owned by residents of Kebon Kacang Village. The remaining 498 other housing units were inhabited by people from outside Kampung Kebon Kacang. In 2019, it is estimated that only 5% of the total residents of the Kebon Kacang Flats, which are residents affected by the eviction of Kampung Kebon Kacang. [Interview with Mr. A.L.F Leuwol on 15 August 2019].

<sup>40</sup> Ward Berenschot & Gerry van Klinken, *Informality and citizenship: the everyday state in Indonesia*, *Citizenship Studies*, 22:2, 95-111, p-99.

<sup>41</sup> From a total of 632 units in Kebon Kacang Flats, there are 600 residential units and 32 kiosk units. Perumnas has 32 stalls spread across each block and each floor. Strategic location in front of the stairs on each floor. 10 stalls have been sold, the remaining 22 stalls. [Interview with Mr. A.L.F Leuwol on 15 August 2019]. Perumnas admitted to having 20 units in the RSKK that were leased to other parties, whose rent was for income from the Perumnas. [Clarification from Mr. Setiawan Andianto, the revitalization section of the DKI flats at the National Housing Corporation on August 28, 2019 at ORI].

<sup>42</sup> Deed of Establishment of the Association of Residents of Rumah Susun Kebon Kacang, dated May 12, 2001 and passed through the Decree of the Governor of Jakarta No. 475 of 2002 concerning Endorsement of the Deed of Establishment of the Residents of the Rumah Susun Kebon Kacang, Central Jakarta Municipality.

issuance of SHGB to RSKK a basis for joint land rights in the name of PPRSKK. This second obligation has not been implemented to date.

The issuance of SHGB in the name of PPRSKK is a form of fundamental legal certainty to guarantee the ownership of RSKK's 632 units. Article 8 paragraph (3) of the Law No. 16/1985 stipulates the legal protection in the form of (1) individual ownership rights of units at RSKK which are used separately; (2) the right to the shared RSKK building ownership; (3) rights to shared individual housing units; and (4) communal land rights. The four property rights constitute a unitary right that is functionally inseparable. The SHGB was published in 1992 but was published in the name of Perumnas and not on behalf of the PPRSKK because, at the time of the issuance of SHGB, the PPRSKK had not yet been formed either by the residents or by Perumnas. In conjunction with the issuance of the SHGB, a Certificate of Ownership of Flat Units (SHMSRS) was issued on behalf of each RSKK owner.

The SHBG validity period for RSKK is 20 years, which ended in 2012. Since the validity period of SHGB expired in 2012, the 632 SHMSRS at RSKK was annulled because the validity period of SHMSRS followed the validity period of the master certificate (SHGB). RSKK owners have made various efforts to push Perumnas and Government to extend the SHGB and SHMSRS of RSKK. The willingness of Perumnas and the Government to extend the SHGB and the 632 SHMSRS of RSKK's owners have not seen positive results.

In addition to the expiration of the validity of the SHGB and SHMSRS of each unit, the physical building, environmental conditions and social conditions in the RSKK are inadequate. Some RSKK building blocks have shown the building's decaying state therefore efforts are needed

to improve physical conditions or revitalize or improve the quality of buildings, environmental and social infrastructure.

After rolling out a physical revitalization plan and the extension of the SHGB of RSKK'S communal land, another question arises: who is authorized to carry out the physical revitalization of the RSKK? Furthermore, who has the right to hold the communal land's right of RSKK? Who has the authorization to revitalize and hold the communal land's right of RSKK on the basis of SHGB ownership? Is it Perumnas or PPRSKK? This conflict of interest cannot be resolved from 2010 until now. Both the PPRSKK and Perumnas have legal arguments that underlie their authority and each party is using the housing's aggravated condition as a legal ground. PPRSKK's legal arguments are based on the legal protection it has under Law Number 20 of 2011 concerning Flats (the new Flats Law) and its subsidiary regulations<sup>43</sup>. Meanwhile, Perumnas takes refuge in Government of the Republic of Indonesia Regulation Number 83 Year 2015 concerning Perumnas (hereinafter referred to as Perumnas Regulation). The two legal grounds conflicted with one another. Both contradictions will be reviewed in the following paragraphs.

The Old and New Condominium Law require all development actors, including Perumnas as "a hybrid public-private" [PHANG, 2007] institution, to settle the status of land from SHPL to SHGB for communal land to the PPRSKK, which has been a legal entity established by and on behalf of the owner and occupants of the PPRSKK. Therefore, PPRSKK has the right to have their SHPL switched to SHGB as the SHPL's validity period has already expired, namely in 2012.

To revitalize the RSKK, the New Condominium Law requires the PPRSKK to hold a general meeting on the revitalization that would result in a decision

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<sup>43</sup> Peraturan Pemerintah Republik Indonesia Nomor 4 Tahun 1998 tentang Rumah Susun; Peraturan Gubernur DKI Jakarta Nomor 132 Tahun 2018

tentang Perhimpunan Penghuni dan Pemilik Satuan Rumah Susun.

agreed by 60% of the owners with valid voting rights (one man, one vote)<sup>44</sup>. PPRSKK can work together with other parties to carry out the revitalization.

However, Perumnas argued that SHGB has already expired. SHGB also cannot be extended and transferred to PPRSKK because Perumnas Regulation prohibits HPL and SHGB owned by Perumnas to be transferred to other parties, despite the owners having paid their units in full, including the communal land rights that are used to build the RSKK. The Perumnas' policies and Perumnas Regulation contrasts the consideration of the Constitutional Justice<sup>45</sup>, which said that according to the Court, the ownership of the apartment interlinked with the land law, which stipulates that those who have owned or bought a flat unit in a "clear" manner using cash, the buying and selling a unit is legal and should be protected. In this case, the payment has been made before an authorized official and the object of sale and purchase has been submitted to the buyer and a certificate (SHMSRS) has been issued, so the owners can be said to be owners of apartment units, the communal land and the shared buildings.

Perumnas Regulation legitimized Perumnas to take the initiative to revitalize the RSKK and keep control of the RSKK's communal land. Although this legitimacy was published in 2015 and the legal status of Perumnas Regulation is lower than the Condominium Law, in reality, the Perumnas policy ignores Perumnas' responsibility in providing legal certainty and protection to 632 RSKK owners.

Various mediation and reconciliation processes between Perumnas and PPRSKK have been pursued, one of which is through the Ombudsman of the Republic of

Indonesia. However, Perumnas remains reluctant to complete the land status with the RSKK.

Perumnas will continue with its plan and design to revitalize 1.6 hectares of land at the RSKK. According to one RSKK resident who has a close relationship with Perumnas, "Perumnas has conducted socialization to RSKK residents". According to him and one of Perumnas employees, the RSKK revitalization design has been approved by 60% of RSKK owners. Data to 60% of residents who agree has not been taken through the one-man, one-vote mechanism as stipulated by the Condominium Law and Decisions of the Constitutional Court 85/PUU-XIII /2015.

Employees at Perumnas said in an interview that they were reluctant to collaborate with the Management team of PPRSKK to discuss revitalization plans. The relationship between them is based on mistrust, making it difficult for each party to work together and solve this problem. Uncertainty of the situation, law and assurance of legal protection was left without a clear decision, unless there is a new Regional Head in Jakarta who would have the guts to displace the 632 RSKK owners. The threat of eviction without proper compensation for the 632 owners of the RSKK is very real, considering the ownership evidence in the form of SHMSRS has expired since 2012. The criminalization threat of the PPRSKK and RSKK owners is very real. The threats are stipulated under the Condominium Law and its subsidiary regulations, which forbid anyone to obstruct plans to improve the quality of housing flats. Which regulations should be used as a legal basis by the State to provide legal protection to its citizens for

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<sup>44</sup> Decision of the Constitutional Court Number 85 / PUU-XIII / 2015, [3.18], pp. 196 - 197. "The Court is of the opinion that the use of the phrase" the right to cast one vote "is appropriate for the purpose of protecting the owner or occupant who has inhabited the unit. In the Elucidation of Article 77 paragraph (2) it has been stated that, "every member has the

right to cast one vote" is if the house has been occupied, the voice of the owner can be authorized to every occupant of the house. If a unit has not been inhabited, each name of the owner has only one vote even though the owner concerned has more than one unit".

<sup>45</sup> *Ibid*, [3.13], hal 192.

ownership of communal land, and private units?

### 3. RECOMMENDATION

Adhering to the principle of *lex superior derogat legi inferior*, the state should resolve the RSKK case based on the Condominium Law. First, the State needs to extend 3 periods and renew 2 SHGB periods for a total of 100 years to the PPRSKK. Second, the Ministry of BUMN and the Ministry of Public Works and Public Housing need to plan and discuss a joint revitalization design between Perumnas, PPRSKK and all RSKK owners on a participatory principle. Third, PPRSKK needs to adjust its organizational structure, statute, bylaws and its regulations in order to become the Association of Owners and Residents of the Kebon Kacang Flats Unit [PPPSRSKK]. This is stipulated in Article 103 (1) of Regulation of Provincial Governor of Jakarta Number 132 of 2018 on Supervision of Owned Flat Management and the amendments stipulated in Regulation of Provincial Governor of Jakarta Number 133 Year 2019 on Amendment to the Regulation of Provincial Governor of Jakarta Number 132 Year 2018 regarding Management of Housing Flats Management. The two rules oblige such adjustments within 3 months from 6 December 2019.

### 4. CONCLUSION

After observing the policies of the three countries above, it can be concluded that **first**, the change in status from community land to state land must be done with recognition and respect for community land regardless of the ownership. Recognition of community land has an impact on providing fair and reasonable compensation. **Second**, all residents, both landowners and users, must be guaranteed in carrying out the slums upgrading so that they can obtain a new house in a new place. **Third**, slum upgrading must use a community land acquisition approach. After the land is transformed into state land,

the length of time to obtain the permit for the state land use that is given to users is adjusted to their needs. If state land is used for horizontal or vertical housing, the State should grant a land use permit for 100 years. Because the use period of 100 years will guarantee the right of its citizens to get adequate housing and empower the economic conditions of its citizens. **Fourth**, the application of applicable law to regulate land, housing, flats, spatial planning and developer should be consistent as to provide legal certainty. **Fifth**, developers who are authorized to provide housing for the middle to lower classes in carrying out their duties to provide housing must be equipped with a legal system, state financial assistance and strict supervision. Reward and punishment system is applied to its employees. **Sixth**, the government must provide a low-interest housing finance or credit scheme as well as an easy and affordable requirement for people who work in the informal sector with income below the minimum wage. So far, these economic classes people have not been able to get the right to adequate and healthy housing due to the unavailability of social security and financial systems. **Seventh**, the supervision system for the provision of subsidized housing for the middle to lower classes must be restructured. In principle, every person who is married can only have one subsidized house. Buying and selling subsidized houses is directly monitored by the government. This supervision is needed to avoid profit seekers who use subsidized low-cost housing only for their own interests.

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