



Legal Aspects Of Flat Ownership In Indonesia

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ABSTRACT

Technologically, the system of multi-storey buildings whose spaces can be used individually has long been known in Indonesia. The building ownership system is a single ownership system that is now developed is the ownership of multi-storey buildings with common property, called Flats, condominiums, or strata title. Hak Milik Satuan Rumah Susunan (HMSRS) is a new institution of material rights, this HMSRS is individual and separate, in addition to ownership of the unit of flats the ownership of the unit of flats (HMSRS) in question includes also joint ownership of the so-called shared parts, shared objects, and shared land where everything is an inseparable unity with the SRS concerned.

INTRODUCTION

The need for a house as a place to live or shelter in urban areas is very large along with the large number of residents, both from natural growth through birth, and urbanization. So far, the fulfillment of the need for a house as a place to live or shelter in urban areas is carried out through horizontal housing construction. This way of meeting needs cannot be done continuously due to the very limited land supply in urban areas .

Therefore, to solve these problems, people began to create houses that are arranged vertically, so that the amount of land that remains no longer affects the availability of houses as human needs. Shared ownership in this residence which is then called Flats, condominiums, strata title. Siswonoyudohusodo stated that building flats in big cities is an unavoidable future trend, which indeed needs to be socialized and there needs to be adjustments to existing cultures in Indonesian society.

Condominiums or flats are some of the terms that refer to vertically arranged houses. Condominium according to the meaning of the word comes from the latin language which consists of two words, Con means together and dominium means owner³, thus the meaning of condominium is joint ownership. In

Indonesia itself there are several terms that are attached to the meaning of condominium and strata title, such as apartments and flats. However, in Indonesian legal language, both what is meant by strata title, condominium, apartment, and flats are regulated in one law that uses the term flats.

METHOD

Legal research requires accurate data obtained through legal approach procedures and field approaches in order to produce research that can be justified. In achieving the purpose of the research mentioned above, it is necessary to use several research methods first, the approach method, the normatif approach method is used and supported by normative juridical research. The approach in this way is carried out considering that in this study starting from the normative aspects governing banking institutions. Second, the types and sources of data used include primary and secondary data. Primary data is data received directly from the public, while secondary data is data obtained library materials.

RESULTS AND DISCUSSION

A. Basic Concepts Of Ownership Of Flats

Technologically, the system of multi-storey buildings whose spaces can be used individually has long been known and implemented in several major cities in Indonesia. The building ownership system is a single ownership system, where the holder of land rights is simultaneously the owner of the building. The users of the ownership system as mentioned above are only bound in the form of a tenancy legal relationship, which does not give material rights to the object of the agreement so that its use for the person concerned is very limited. Sole proprietorship is seen from the ownership of the land on which the high-rise building stands so that the certificate holder is also the owner of the building.

Property Rights Unit flats (HMSRS) is a new institution of material rights introduced through the flats act according to UURS, HMSRS is individual and separate. In addition to the ownership of the flat unit (SRS), the HMSRS concerned includes also the right of joint ownership of the so-called shared parts, shared objects, and shared land, all of which are an integral part of the SRS concerned. The basic concept underlying HMSRS itself stems from theories about ownership of an object. According to the law, an object/building can be owned by a person, two people or even more, which is known as joint ownership. In joint ownership of an object/building in principle known 2 (two) forms of ownership, namely :

a. Bonded joint ownership (gebonden mede eigendom), then the main basis is the legal bond that first existed between the owners of the common thing. For example: joint ownership contained in marital property, or inheritance property. The co-owners (mede eigendom) cannot freely transfer their rights to another person without the consent of the other mede eigenaar, or as long as the husband and wife are still in the marriage bond, it is not possible to separate and divide the marital property.

b. Free joint ownership (vrije mede eigendom), then between the co-owners there is no legal bond in advance, other than the joint right to be the owner of an object. Here there is a will to jointly become the owners of an object for joint use.

It was this free form of common ownership that according to Roman law was called "CONDOMINIUM" whose application is regulated by law.

Based on this concept, the UURS formulated a type of individual ownership and joint ownership in a package of new types of ownership called ownership rights over flats units, with the

understanding as described above, namely the right of individual ownership of units (units) flats, also includes joint rights over buildings, objects and land.

In addition to the HMSRS concept, the new apartment law is law No.20 of 2011 introduced a new concept, with ownership without land rights because land rights are owned by other people not the owner of the apartment unit, as proof of ownership of the apartment unit. The owner (of the apartment unit) is issued a Certificate of ownership of the building (SKBG).

B. Objects and subjects of the unit flats.

Article 17 of Law No. 20 year 2011 on flats stipulate flats can be built on land ;

- a. Property Rights
- b. The right of use of buildings or land; and
- c. Building use rights or use rights over management rights

The following will describe the types of land rights that can be used for the construction of flats :

1. Property Rights

Property rights are hereditary rights, the strongest and fullest that can be owned by Indonesian citizens and certain legal entities designated in Government Regulation No. 38 of 1963. Like :

- a. Government Banks
- b. Agricultural Cooperatives
- c. Religious Bodies
- d. Social Bodies

All of them with the record of being appointed by the government after hearing the minister who has jurisdiction over the aforementioned bodies.

Given that the owner of the apartment and the owner of the apartment unit must qualify as the right holder of the land on which the apartment is built, the apartment unit built on land with property rights is only limited to the ownership of individual Indonesian citizens and legal entities appointed under PP No.38 in 1963.

2. Building use rights on State Land

Perpetrators of the construction of flats that build flats on land rights to building on state land are Indonesian citizens, legal entities established according to Indonesian law and domiciled in Indonesia, for example private enterprises in the form of limited liability companies (PT).

3. Building use rights on Land Management rights

Actors in the construction of flats that build flats on land rights to building on Land Management rights are state-owned enterprises in the form of National Housing Development Public Company (Perum Perumnas).

4. Right of use on State Land

The perpetrators of the construction of flats that build flats on Land Use Rights on state land are Indonesian citizens, foreigners residing in Indonesia, ministries, Non-ministerial government agencies, state-owned enterprises, regional-Owned Enterprises, Authority bodies, religious bodies, Social bodies, private business entities in the form of limited liability companies (PT).

5. Land Use Rights Management rights

Actors in the construction of flats that build flats on Land Use rights to land management rights are state-owned enterprises in the form of National Housing Development Public Company (Perum Perumnas).

In addition to being built on land as mentioned above, public flats and / or special flats can be built with :

a. Utilization of state/regional property in the form of land

Utilization of state/regional property in the form of land for the construction of flats is carried out by means of rent or utilization cooperation.

b. Utilization of waqf land

Utilization of waqf land for the construction of flats is carried out by means of rent or utilization cooperation in accordance with the Waqf pledge.

C. Terms Of Construction Of Flats

According to Article 24 of Law No. 20 of 2011 concerning flats, the requirements for the construction of flats include administrative requirements, technical requirements, and ecological requirements.

a. Administrative requirements

Administrative requirements under Article 28 of Law No. 20 of 2011 include :

Status Of Land Rights ;

Building permit (IMB).

b. Technical requirements

Technical requirements under Article 35 of Law No. 20 of 2011 include :

Layout of the building which includes the requirements for the designation of the location as well as the intensity and architecture of the building ; and Building reliability which includes safety, health, comfort, and convenience requirements.

c. Ecological requirements

Ecological requirements based on Articles 37 and 38 of Law No. 20 of 2011 are requirements that meet the environmental impact analysis in terms of the construction of flats that include Harmony and balance of environmental functions and are equipped with environmental management documents. What is meant by environmental management document is a document that is required for the person in charge of business and/or

activities that have an impact on the environment in the licensing process. Such documents can be:

Environmental Impact Assessment ,
Environmental management efforts and
Environmental monitoring efforts

In addition to administrative requirements, technical requirements and ecological requirements, the construction of flats must obtain permission from the Regent/mayor about the planned functions and utilization of flats. The permit application is submitted by the perpetrators of development by attaching the requirements :

a. Certificate of title to land;

b. Certificate of district/city plan;

c. Site plan image;

d. Architectural plan drawings containing floor plans, looks, and pieces of flats that clearly show The Vertical and horizontal boundaries of the flats;

e. Structure plan drawings and calculations;

f. Plan drawings showing clearly the shared parts, shared objects, and shared land; and

g. Drawings of general utility plans and installations along with equipment.

Development actors after obtaining permission from the Regent/mayor about the planned functions and utilization of flats, must ask for approval and the local government about pertelaan showing clear boundaries of each sarusun, shared parts, shared objects, and shared land along with a description of the proportional comparison value or NPP. This is confirmed in Article 30 of Law Number 20 of 2011 concerning flats.

D. Marketing and sales of flats

Currently, a habit has developed in the housing business world to market flats that are being built or even not yet built, namely sales with a Pre Project Selling system. In 1967, French law dealt with the sale of units of a construction plan using a special type of agreement, known as a sale of a building to be constructed. Under the agreement, the buyer will pay an initial amount of money to the developer followed by successive payments as construction progresses, then the buyer will become the owner of the building in stages, and the buyer is protected by law where the building is not completed by the developer. The reason why developers are allowed to receive money and installments from buyers before the building is completed is to ensure that the developer is in a position to be able to finance the construction of the building. The developer can borrow more easily from the financial institution and the developer can then pay the building contractor with the money he earned from the buyer. For Indonesia, Sales with Pre Project Selling system is done by making a sale and Purchase Agreement

(PPJB). PPJB is an agreement of two parties to carry out their respective achievements in the future, namely the implementation of the sale and purchase in front of the land deed officer (PPAT), when the building has been completed, certified, and habitable. PPJB is made as a preliminary agreement that aims to bind the parties before the deed of sale (AJB) is made before PPAT. AJB is a deed authentic made by PPAT as evidence for the transition ha katas land and buildings. AJB is what will be used for registration of transfer of rights to the Local Land Office or better known as balik nama. With the completion of the process behind the name, then the rights attached to the land and buildings have passed from the seller to the buyer. This PPJB is a standard agreement that is generally made by developers. Considering that PPJB is a developer, of course there is a tendency of subjective factors that benefit developers and can harm buyers. These 5 dominant developer positions open up opportunities to tend to abuse their position. Many information is not given publicly during the PPJB process, for example related to the status of land ownership, building specifications, What if there is a delay in delivery and violation of the collective rights of buyers committed by the developer, for example related to parking lots, parks, and other facilities agreed.

The strategy of selling flats by marketing flats that have not been completed or even built is a sales strategy that is often used by developers. Usually flats are marketed still in the form of drawings / plans flats only, licensing required has not been completely taken care of, even not uncommon when still planned and the maturation of the land is also still unclear where the exact location is. The marketing strategy of flats like this in practice is known as Pre Project Selling. Marketing strategies with Pre project Selling are considered more rational and profitable for developers because they can take advantage of payments made by buyers as capital in building. There is a trust between the developer and the buyer, that is, the developer believes that the buyer will pay the payment in accordance with what they agreed. Juridically formal pattern of sale of flats with pre project Seling system is not prohibited. In the flats law also provides advice for doing such marketing. As described in Article 42 paragraph

1 of the flats law, which states that development actors can do marketing before the construction of flats is completed. Provisions governing specifically related to Pre-Project Selling does not exist, therefore the main basis for determining the rights and obligations of the parties lies in the freedom of

contract, while the mechanism for determining the rights and obligations of the parties set forth in the form of a sale and purchase agreement (PPJB).

Based on Article 43 paragraph 2 of Law No. 20 of 2011 on flats, the process of buying and selling flats units carried out before the construction is completed can be done by making a sale and Purchase Agreement (PPJB) made in the presence of a notary, provided that they meet the certainty of :Land ownership Status, IMB ownership, Availability, facilities and public facilities, Development at least 20% (twenty percent), Things promised

CONCLUSION

Housing development in urban areas has been carried out through horizontal housing development, but this pattern of development cannot be carried out continuously due to limited housing land in urban areas, it is necessary to build vertical housing called Flats. The regulation of flats in Indonesia is regulated in Law No. 16 of 1985, which is updated with Law No. 20 of 2011 on flats with the Implementing Regulation PP No. 4 of 1988 on flats.

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