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Regulation of Associations of Flat Owners and Tenants in Management of Flats for Legal Assurance and Justice

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Abstract

The ownership of the condominium unit gives birth to the ownership rights to the apartment units which are individual rights, and joint ownership rights in the form of shared parts, shared objects, and shared land. Individual property rights in the form of condominium units are managed by the condominium owner himself, while the shared parts, common objects and shared land are jointly managed by the condominium owner. The owner is obliged to form PPPSRS as the manager of the condominium unit, while the developer is obliged to facilitate the formation of the PPPSRS and is obliged to manage the condominium unit in the "transition period" until the PPPSRS is formed. The meaning of the phrase "transition period" contained in the Elucidation of Article 59 paragraph (1) is different from the meaning of the phrase contained in Article 59 paragraph (1) of Law 20/2011, thus causing problems in the formation of PPPSRS and the management of the condominium unit. In addition, the problem with the formation of PPPSRS and management, is also due to the unclear meaning of the phrase "first handover of the condominium unit to the owner, and the phrase "management that is a legal entity", thus causing problems in its application. In the case of the formation of PPPSRS, the Development Actors in providing facilities are not serious, it is indicated that there is an effort to stall for time, is not transparent, and the formation is a formality, and dominates the process of forming the PPPSRS, so that in the end the Development Actors control the management of the house. stack. In terms of the management of flats, the Developers are not transparent and open in determining management costs, especially in determining the amount of service charge, electricity bill,

Environmental Management Fee (IPL), and others, so that it is very burdensome and detrimental to the Owner or Tenant. flats. Therefore, it is necessary to rSudaryatmo, a regarding PP SRS, and the parties must have good faith, be transparent and open, so that in determining the amount of service charge, electricity bill, Environmental Management Fee (IPL) is carried out by consensus. Thus, the objectives of regulating PPPSRS and managing flats with legal certainty and justice will be realized.

Keywords

Flats, Arrangement of Association of Owners or Tenants of Flats, Management of Flats.

Introduction

The 1945 Constitution of the Republic of Indonesia, Article 28H paragraph (1) confirms that everyone has the right to live in prosperity, physically and mentally, to live, and to have a good and healthy environment. Residence has a strategic role in shaping the character and personality of the nation as well as one of the efforts to build Indonesian people as a whole, self-identified, independent, and productive¹. Therefore, the state is responsible for ensuring the fulfillment of the right to housing in the form of decent and affordable housing. So to realize the stated goals of the state, especially in the housing sector, the Government organizes flats. As the basis for the implementation, the Government promulgated Law Number 20 of 2011 concerning Flats (Law 20/2011) along with its implementing regulations, including: Government Regulation Number 13 of 2021 concerning Implementation of Flats (PP 13/2021), Regulation Government Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration (PP 18/2021) and Minister of Public Works and Public Housing Regulation Number 14 of 2021 concerning Association of Flat Owners and Occupants (PMPU-PR 14/2021).

Flats are built in an environment that is divided into functionally structured parts, both in the horizontal and vertical directions and are units that each can be owned². In the apartment building there are individual rights and joint rights for the owner of the apartment unit. The part which is an individual and separate right in the apartment building is called the apartment unit, while the joint right includes the joint part, shared object, and shared land³. The right born from the apartment unit is the Ownership Right of the Flat Unit (HMSRS). The scope of HMSRS is property rights that are individual and separate, including joint parts, shared

¹ Hong Fu and others, 'Heterogeneous Choice in WTP and WTA for Renting Land Use Rights in Rural China: Choice Experiments from the Field', *Land Use Policy*, 119 (2022), 106123 <<https://doi.org/10.1016/j.landusepol.2022.106123>>.

² Frank Akowuge Dugasseh, Clement Aapengnuo, and Marianne Zandersen, 'Land Tenure Regimes for Women in Community Resource Management Areas (CREMAs) in Northern Ghana: Opportunities and Threats', *Land Use Policy*, 109 (2021), 105602 <<https://doi.org/10.1016/j.landusepol.2021.105602>>.

³ Trias Aditya and others, 'Title Validation and Collaborative Mapping to Accelerate Quality Assurance of Land Registration', *Land Use Policy*, 109 (2021), 105689 <<https://doi.org/10.1016/j.landusepol.2021.105689>>.

objects and joint land which are the joint rights of all owners of flats⁴.

The apartment unit which is an individual right and is separately managed by the owner of the apartment unit. Meanwhile, the shared parts, common objects and shared land are managed jointly by all owners of flats through the Association of Owners and Tenants of Flats (PPPSRS). Owners of flats are required to form PPPSRS as stipulated 74 of Law 20/2011 and consists of Owners or Tenants of flats. Meanwhile, the Development Actors are obliged to facilitate the formation of PPPSRS no later than before the end of the transition period. (Vide, Article 75 paragraph (1) of Law 20/2011).

Furthermore, PPPSRS is obliged to take care of the interests of the Owners and Tenants related to the management of ownership of joint objects, joint parts, joint land, and occupancy⁵. PPPSRS in carrying out the management can form or appoint managers. Meanwhile, the manager in question must be a legal entity, registered, and have a business license from the regent/mayor, specifically the Province of the Special Capital Region of Jakarta from the governor. (vide, Article 75 PP 13/2021). Regarding the manager who is a legal entity, it must be in the form of a limited liability company, (vide, Article 37 PMPU-PR 14/2021).

Although normatively the PPPSRS has been regulated, in its implementation it has not run as well as possible. This is due to the regulation of PPPSRS which still gives rise to multiple interpretations, so that it has an impact on the difficulty of establishing PPPSRS and implementing the management of flat units. According to Ibnu Tadjji, in addition to this problem due to the existence of provisions of the law which are still multi-interpreted, it is also due to the large economic benefits obtained, so that Development Actors are very dominant in the process of forming PPPSRS, with the aim of being able to maintain control over the management of the apartment unit in question.

Based on the description above, to obtain a comprehensive understanding of the arrangement and management of flat units by PPPSRS, so the author conducts a study that focuses on how the regulation of PPPSRS, and the management of apartment units can realize legal certainty and justice.

Research Methods

This research is doctrinal legal research that refers to library materials or secondary data. Normative legal research includes research on legal principles, levels of vertical and horizontal synchronization, legal comparisons and legal history. Meanwhile, according to Soerjono Soekanto, legal research conducted by examining library materials or mere secondary data, can be called normative legal research or library law research.

Therefore, this study seeks to describe or provide an overview of how the

⁴ Lawrence W.C. Lai and others, 'Informal Land Registration under Unclear Property Rights: Witnessing Contracts, Redevelopment, and Conferring Property Rights', *Land Use Policy*, 50 (2016), 229–38 <<https://doi.org/10.1016/j.landusepol.2015.09.016>>.

⁵ Daniel Ayalew Ali and others, 'Sustaining Land Registration Benefits by Addressing the Challenges of Reversion to Informality in Rwanda', *Land Use Policy*, 110 (2021), 104317 <<https://doi.org/10.1016/j.landusepol.2019.104317>>.

regulation of PP SRS in the management of flats to realize legal certainty and justice, for the owners or residents of flat units and provide input and ideas to stakeholders in the field of organizing flats in particular. type of commercial flats.

Results and Discussion

Regulation of PPPSRS and Management of Flat Units That Can Realize Legal Certainty and Justice

Based on the existence of individual rights and joint rights in the ownership of the apartment unit, the existence of Ownership Rights on Flat Units which are individual rights, and joint property rights in the form of shared parts, shared objects, and shared land. Individual property rights in the form of apartment units are managed by the owner of the apartment unit alone, while the joint parts, joint objects and joint land are managed jointly by the owner of the housing unit. To facilitate the management of these joint property rights, the law requires the owners of flats to form a PPPSRS, as confirmed in Article 74 paragraph (1) of Law 20/2011, which reads " The condominium owner is obliged to form a PPPSRS ". Meanwhile, the Development Actors are obliged to facilitate the formation of PPPSRS (vide, Article 75 paragraph (1) of Law 20/2011) . The facilities provided by the Development Actors in the formation of the PPPSRS have a very important role, because the Development Actors better understand all matters relating to joint property rights which include joint parts, shared objects and shared land, as well as management in question (Pandya & Van Deventer, 2021).

Furthermore, PPPSRS in carrying out such management, may appoint a manager who is a legal entity to carry out management tasks. This is regulated in Article 36 PMPU-PR 14/2021, which reads "PPPSRS in managing the Flats may form or appoint a manager". The existence of PPPSRS which aims to maintain, maintain, and jointly utilize the common parts, common objects, and common land, but in practice there are still many problems that arise. This problem arises not only due to conflicting provisions between one another, but also due to the importance of obtaining very large economic benefits for the manager of the apartment unit. Furthermore, to obtain a comprehensive understanding of the problems and their solutions, this study was conducted using a philosophical, juridical, and sociological perspective approach (Paul & Omeje, 2022).

Philosophical Perspective

According to Max Boli Sabon, quoted by I Gusti Ketut Rachmi Handayani, the formation of law in Indonesia, both in the form of laws and regulations (legislation and regulation) and jurisprudence must be based on Pancasila as the ideals of Indonesian law⁶. Pancasila as a guiding star (lietstern) is a measuring tool

⁶ Lego Karjoko, Zaidah Nur Rosidah, and I Gusti Ayu Ketut Rahmi Handayani, 'Refleksi Paradigma Ilmu Pengetahuan Bagi Pembangunan Hukum Pengadaan Tanah', *BESTUUR*, 7.2 (2020), 1 <<https://doi.org/10.20961/bestuur.v7i1.42694>>.

for law-making in order to guard the goals law. When the law deviates from Pancasila, it does not have binding power (efficary), although formally it is still valid (validity)⁷.

Pancasila as the basis of the state, normatively and practically must be the⁸ foundation or basis for the operation of the Indonesian legal system. The position of Pancasila has the consequence that all state activities, including the administration of government, must be based on Pancasila both materially and ethically. Pancasila is the equivalent or reflection of the soul and legal ideals (rechtsidie) of the Indonesian nation which is the basic norm in state activities. Therefore, Pancasila is the source of all sources of Indonesian law, both written and unwritten. It is this legal ideal that directs the law to the common goals of the Indonesian nation. These ideals are directly a reflection of the commonalities of interests among fellow citizens of the nation. Thus, the legal system that applies in Indonesia must be based on the values of Pancasila which have become the agreement of the citizens of the Indonesian nation.

The essence of Pancasila as the basic idea of the life of the nation and state, not least in social life, is actually viewed from the perspective of the legal system, especially in forming families who live in an environment based on law and law. To society, Indonesia has characteristics that are characterized by Pancasila law, namely upholding the basic values of Pancasila which are familial and gotong royong or community association. The nature of kinship and mutual cooperation, which are the values of Pancasila, is a way of life for the Indonesian people. The value of Pancasila in the fifth principle emphasizes that the Indonesian people are aware of the same rights and obligations to realize justice for all Indonesian people. Gotong royong is a characteristic or character of the Indonesian nation, although the nation's culture is developing very rapidly, the cosmology of the culture of mutual cooperation and kinship in the housing environment must be maintained⁹.

The development of the implementation of flats in Indonesia, on the one hand is one of the government's efforts to improve the welfare of the community in the housing sector, but on the other hand, the implementation of flats has implications for a shift in society with a culture of gotong royong culture in accordance with the values of Pancasila, turning into a society that individualistic character. The shift in the culture of gotong royong that leads to an individualist culture must be the attention of stakeholders in formulating policies, not least in the apartment environment. Therefore, in order to preserve the culture of mutual cooperation and kinship in the atmosphere of a vertical flat environment that remains nuanced as a horizontal home environment, and still provides opportunities for children's growth and development as when occupying a

⁷ Rahayu Subekti, Adi Sulistiyono, and I. Gusti Ayu Ketut Rachmi Handayani, 'Solidifying the Just Law Protection for Farmland to Anticipate Land Conversion', *International Journal of Economic Research*, 14.13 (2017), 69–79.

⁸ Mohammadreza Farrokhnia and others, 'Bridging the Fields of Entrepreneurship and Education: The Role of Philosophical Perspectives in Fostering Opportunity Identification', *The International Journal of Management Education*, 20.2 (2022), 100632 <<https://doi.org/10.1016/j.ijme.2022.100632>>.

⁹ Martin Zach and Gregor P. Greslehner, 'Towards an Extended View of Immunity: A Philosophical Perspective', *Anaesthesia Critical Care & Pain Medicine*, 41.6 (2022), 101156 <<https://doi.org/10.1016/j.accpm.2022.101156>>.

horizontal house , the law The law must regulate more firmly and concretely, regarding the availability of public facilities in the residential neighborhood of flats, among others, in the form of playgrounds , gathering places, worship facilities and other adequate public spaces .

Thus, the community or apartment dwellers, even though they live vertically, due to the availability of adequate public facilities and allow them to interact directly in certain forums, the culture of gotong royong and kinship will be preserved or maintained in accordance with Pancasila values. However, on the other hand, if the law does not negate the availability of these public facilities, the cosmology of the culture of gotong royong and kinship culture will gradually be eroded, so that the culture of gotong royong and kinship turns into an individualistic culture. If this happens, it will certainly harm the younger generation and the estuary will eventually erode the culture of mutual cooperation and kinship into an individualistic society¹⁰. Therefore, government policies in the administration of flats must pay attention to these interests, so that the Development Actors must provide these facilities, while the PP SRS which has the responsibility of managing the apartment units cannot be separated from the responsibility of preserving the culture of mutual cooperation. and kinship, as well as realizing the apartment environment in accordance with the objectives of the implementation of the apartment¹¹. Thus, despite living as a family in a vertical flat environment, the cosmology of mutual cooperation and kinship culture, which are the values of Pancasila, is still sustainable and protected from the influence of individualistic culture that develops today.

Juridical and Sociological Perspective

In discussing the juridical and sociological perspectives, the author examines them together considering that the two perspectives are intertwined¹². This departs from the general understanding that the sociological perspective emphasizes that every legal norm set forth in the law must reflect the demands of the law the community's own needs for legal norms that are in accordance with the reality of public legal awareness, while the juridical perspective is a consideration or reason that illustrates that regulations are formed to overcome legal problems or fill legal voids by considering existing rules, which will be changed, or will be repealed. to ensure legal certainty and a sense of community justice¹³. Therefore, the discussion is carried out simultaneously so as not to repeat the presentation and also to be more effective and efficient.

In line with Boedi Harsono's opinion, that in order to maintain order and

¹⁰ Ute Deichmann, 'The Idea of Constancy in Development and Evolution – Scientific and Philosophical Perspectives', *Biosystems*, 221 (2022), 104773 <<https://doi.org/10.1016/j.biosystems.2022.104773>>.

¹¹ Johannes A. Karl and Ronald Fischer, 'Human Values and Basic Philosophical Beliefs', *New Ideas in Psychology*, 66 (2022), 100944 <<https://doi.org/10.1016/j.newideapsych.2022.100944>>.

¹² Yves Pepermans and Ilse Loots, 'Wind Farm Struggles in Flanders Fields: A Sociological Perspective', *Energy Policy*, 59 (2013), 321–28 <<https://doi.org/10.1016/j.enpol.2013.03.044>>.

¹³ Jane Donoghue, 'Reflections on the Sociology of Law: A Rejection of Law as "Socially Marginal"', *International Journal of Law, Crime and Justice*, 37.1–2 (2009), 51–63 <<https://doi.org/10.1016/j.ijlcj.2009.03.001>>.

harmony in apartment dwellings as well as the use and management of shared parts, shared objects, and shared land which are joint property, it is necessary to have a legal rule that regulates them. In terms of the management of flats, in the perspective of the Pancasila state law, efforts are made to create a harmony and balance between individual interests and national (society) interests by giving the state the possibility to intervene as long as it is necessary for the creation of a national and state life in accordance with the principles of Pancasila principles.

Therefore, the interests of the community and the interests of individuals must balance each other, so that in the end the main goal will be achieved: prosperity, justice and happiness for the people as a whole (Article 2 and Article 3 of the LoGA). The regulations in the field of flats currently in effect include law Number 1 of 2011 concerning Housing and Settlement Areas, law Number 20 of 2011 concerning Flats, law Number 11 of 2020 concerning Job Creation, government Regulation Number 13 of 2021 concerning the Implementation of Flats, regulation of the Minister of Public Works and Public Housing Number 14 of 2021 concerning Association of Owners and Occupants of Flats, government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration.

As described previously, the implementation of flats gives birth to joint property rights in the form of shared parts, shared objects, and joint land which are managed by the development actors during the transition period and PPPSRS¹⁴. Article 74 paragraph (1) of Law 20/2011 affirms "The owner of the condominium unit is obliged to form a PPPSRS". PPPSRS is obligated to take care of the interests of the owners and occupants related to the management of joint ownership of objects, joint parts, joint land, and occupancy. PPPSRS consists of owners or residents who have the power of attorney from the owner of the apartment unit. In carrying out the management, PPPSRS can establish or appoint a manager who is a legal entity. Meanwhile, Article 75 paragraph (1) of Law 20/2011 states "Development actors are required to facilitate the formation of PPPSRS no later than the end of the transition period as referred to in Article 59 paragraph (2). Prior to the formation of PPPSRS, Article 59 of Law 20/2011 stipulates that Developers who build commercial flats prior to the formation of PPPSRS are required to manage flats. What is meant by the transition period is a maximum of 1 (one) year since the first handover of the condominium unit to the owner. Development actors in carrying out management can work together with managers. Furthermore, the provisions of PP SRS are regulated in Article 78 of Law 20/2011, PP 13/2021, PP 18/2021 and PMPU-PR 14/2021. However, it should be understood that before the enactment of PP 13/2021, PP 18/2021 and PMPU -PR 14/2021, that PPPSRS is regulated through Government Regulation Number 4 of 1988 concerning Flats, and Minister of Public Works and Public Housing Regulation 23/PRT/M/2018 concerning Association of Owners and Occupants of Flats.

Based on the provisions of Article 59, Article 74 and Article 75 of Law

¹⁴ Andy J Hartanto, 'Property Rights of the Unit as the Debt Guarantees', 54.1 (2017), 38–44.

20/2011, that Development Actors have the obligation to manage flats during the transition period and facilitate the formation of PPPSRS, then, after the formation of PPPSRS, management is carried out by PPPSRS. According to Ibnu Tadjji, this provision in practice causes many problems (dispute), in the formation of PPPSRS because each party (Development Actors and Owners) has different points of view and interests. Moreover, the existing regulations do not regulate clearly and unequivocally. These problems include (1) there is a conflict in the meaning of the phrase "transition period" in the Elucidation of Article 59 paragraph (1) with the norms of Article 59 paragraph (2) of Law 20/2011; (2) what is meant by the first handing over of condominium units to the owner; and (3) managers who are legal entities. In addition, it is also because the Development Actors have interfered too much in the formation of the PPPSRS, which is motivated by economic interests, so that the Development Actors as depelovers want to always control the management of the flats in question. Furthermore, these problems can be explained as follows:

First, there is a conflict in the meaning of the phrase "transition period" in the Elucidation of Article 59 paragraph (1) with the norm of Article 59 paragraph (2) of Law 20/2011; the full sound is: Elucidation of Article 59 paragraph (1): What is meant by "transition period" is the period when the condominium unit has not been completely sold. Article 59 paragraph (2): The transition period as referred to in paragraph (1) is stipulated no later than 1 (one) year from the first delivery of the condominium unit to the owner. The existence of differences, even contradictions, between the sound of Article 59 paragraph (2) of the Flats Law and its explanation in defining the "transition period" can be used as a justification by the Development Actors to act as managers on the grounds that the condominium units have not been completely sold even though it has exceeded the one year period.

Along with the development of the management of the flats, the Developers always try to remain the management of the flats, by taking refuge from the weak provisions of these regulations¹⁵. This is very detrimental to the owners of flats because the owners find it difficult to form PPPSRS, even though according to the law the owner is obliged to form PPPSRS which has the role of managing the flats in question. Furthermore, to obtain legal certainty and justice for the owners or occupants, a petition for review of Law Number 20 of 2011 concerning Flats is filed at the Constitutional Court. Then the Court recorded in the Electronic Constitutional Case Registration Book with Case Number 21/PUU-XII/2015.

Furthermore, in the trial of the Constitutional Court, the Petitioner's expert (Ibnu Tadjji), explained that the formation of PPPSRS was a problem, because there were three parties who were given the mandate to form PPPSRS, namely the Government through Article 70 and Article 71 of Law 20/20 1 1 was given authority to control: (1) planning, (2) development, (3) control, and (4) management. The problem related to the formation of PPPSRS is in point (4), namely management

¹⁵ Venny Indria Maria and others, 'WEAKNESSES OF THE PRE PROJECT-SELLING SYSTEM IN THE SALE AND PURCHASE OF FLATS', *Journal of Social Sciences*, 5.2 (2022), 196–210 <[https://doi.org/10.52326/jss.utm.2022.5\(2\).18](https://doi.org/10.52326/jss.utm.2022.5(2).18)>.

because those who are given the mandate to form it are the owners (see Article 74 paragraph (1) of the Flats Law). Then, another mandate was given to the Developer to facilitate the formation of PP SRS. Though, Developer when you have done the handover means that the certificate split has been done.

The developer is also the owner, but the special owner is given special rights as regulated in Article 75 paragraph (1) of the Flats Law which makes it different from other condominium owners. Developers are given special privileges, when in fact they are in the same position. There is no longer a Developer when the condominium unit has been handed over, both have the same position as owners, namely having the obligation to form, but by giving one privilege to the Developer as the owner, this will cause the owner to dominate, meaning that the weight of facilitating it becomes dominant, very dependent on the Developer. whether the PPSRS can be formed immediately or not.

Meanwhile, according to expert Sudaryatmo, as the Chairperson of the YLKI Daily Management, explained that the cases of complaints that came to YLKI were related to the formation of PPPSRS, when the developer still had the unit and if the facilitation was handed over to the Developer, there would actually be a conflict of interest. Developer, on the one hand he is a Developer or as a facilitator, but also, he is the owner. The tendency is when he facilitates and he also has an interest, he will include people who are authorized as owners to sit in PPSRS. So, the facilitation function would be more appropriate if it was in the Government/Local Government/Housing Service, not in the Developer¹⁶;

With regard to the petition for judicial review of the law, in the Court's consideration [3.14] item 5, confirms, among other things

Whereas, ... it has become clear to the Court that the argument of the Petitioners stating that they do not get fair legal certainty by the enactment of Article 75 paragraph (1) of the Flats Law is quite reasonable, but it is not caused by the phrase "construction actor" in Article 75 paragraph (1) of the Law on Flats, as argued by the Petitioners, but because of the conflict between Article 59 paragraph (2) of the Law on Flats and its Elucidation in defining the meaning "transition period".

Furthermore, in the Court's decision

Stating Article 75 paragraph (1) of Law Number 20 of 2011 concerning Flats as long as the phrase "Article 59 paragraph (2)" is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted that what is meant the "transition period" in the Elucidation of Article 59 paragraph (1) does not mean 1 (one) year without being associated with the unsoldability of all flat units.

Although there has not been any change in the text of Law Number 20 of 2011 concerning Flats, in its application it must be in accordance with a quo

¹⁶ Janice Morphet and Ben Clifford, 'Local Government, Housing and Planning in the UK: A History', in *Reviving Local Authority Housing Delivery* (Bristol University Press, 2020), pp. 33–58 <<https://doi.org/10.51952/9781447355755.ch002>>.

decision of the Constitutional Court. Thus, all parties must submit and comply with the Court's decision, with the hope that the owners of the flats will not be harmed again in the formation of PPPSRS and the management of the flats, so that legal certainty and justice for the Owners and Tenants will be realized¹⁷.

Second: the first delivery of the apartment unit to the Owner. The phrase for the first handover of the apartment unit to the Owner, actually relates to the provisions of the obligations of the Developer as the manager of the apartment. Article 59 paragraph (2) of Law 20/2011, confirms that the transition period as referred to in paragraph (1) is stipulated no later than 1 (one) year from the first delivery of the condominium unit to the owner. In terms of the meaning of "transitional period" has been interpreted by the Court through the Decision of the Constitutional Court Number 21/PUU-XIII/2015. Meanwhile, regarding the concept of "first handing over of apartment units to the owner", the law does not clearly regulate what or when it means to first hand over the apartment unit to the owner. According to Samson Munthe , as a witness in the trial at the Constitutional Court, he explained that the witness who owns the Alamanda Gading Nias Residence Flats, has not yet formed PPPSRS. It has been eight years since the first key submission in 2008 until now. Counting from 2011, it has been four years or three years, not formed. Meanwhile, according to Ibnu Tadjji, that the first delivery is a legal issue because the law does not clearly regulate it, for example the Developer has handed over 10 units out of 1000 units to the Owner, whether the transition period is calculated from the first delivery or after all units are sold and handed over to the Owner.

In line with the opiMunthe,Ibn Tadjji, according to Sudiyatmo, explains that

Establishment of the Association of Flat Owners and Occupants (P PPS RS). According to Law No. 20 of 2011 concerning Flats, PPPSRS must be formed no later than one year after the handover of the apartment units. This provision needs to be clarified, especially regarding: (1) the definition of unit handover here, whether in the sense of physical handover, or handover in a legal sense, there is a transfer of title/levering ; (2) a period of one year, calculated since the first unit is handed over or after all units are handed over; (3) in the formation of P PPS RS, it is facilitated by the developer, but at the same time, a number of developers deliberately do not sell all the apartment units, so that there is a tendency for the Developer to place their people in the management of PP PPS RS.

Moreover, the formation of PPPSRS is not easy and the organizational structure also requires a lot of human resources and must have expertise in their field. In addition, if the owner does not have a Sale and Purchase Deed (AJB), also cannot form a PPPSRS. Therefore, the rules regarding the first-time handover must be regulated more firmly and clearly and take into account the legal aspects and

¹⁷ Zainal Arifin Mochtar and Kardiansyah Afkar, 'President's Power, Transition, and Good Governance', *Bestuur*, 10.1 (2022), 68 <<https://doi.org/10.20961/bestuur.v10i1.59098>>.

cauences. In addition, it must be realized that in a long period of time the government has not issued such a regulation, this is also one of the causes of the complexity of setting up the PPPSRS and the lack of clarity on the rules for managing flats.

Furthermore, according to the Court, what is meant by the surrender of the first time is as referred to in the legal considerations of Decision Number 85/PUU-XIII/2015, paragraph [3.13], namely:

Considering the legal uncertainty due to the absence of confirmation regarding the transfer as a juridical handover, according to the Court, the ownership of flats is related to land law, where a person already owns or has purchased a right at the time of the legal act of buying and selling which is carried out in an open and cash manner. For this reason, if someone has carried out a legal act of legal buying and selling, in this case the payment has been made in the presence of an authorized official and moreover in this case the object of sale and purchase has been handed over to the buyer, then that person or party can already be said to be the owner of the land or building, although the certificate of ownership of the right in question has not been issued, because the certificate is not a condition for the validity of the sale and purchase, so that the delivery of the object of sale and purchase must not be hindered by the requirement that the certificate has not been issued¹⁸.

This Court's opinion ends the debate as to what is meant by the first handing over of the apartment unit to the Owner¹⁹. However, in practice it remains a difficult problem to implement, because if the transition period is calculated from the time the buyer has paid the unit price of the apartment and has occupied it, legally the buyer has not been able to carry out the Sale and Purchase Deed (AJB) because the SHMRS (Certificate of Ownership of the Flats) is still in the name of the Developer.

Finally, the issue of procedures regarding the first handing over of flat units to owners is regulated through PP 13/2021. Article 84 confirms that:

Paragraph (1) The first handover of the condominium unit by the developer is carried out by handing over the key after the function-worthy certificate is issued.

(2) The first delivery of the condominium unit as referred to in paragraph (1) is accompanied by the submission of the following documents involve minutes of key handover, deed of sale & purchase and SHM Condominium or SKBG Condominium.

If the provision is related to Article 2 paragraph (4) of PMPU-PR 14/2021, namely, the transition period as referred to in paragraph (2) is set no later than 1 (one) year from the first delivery of the condominium unit to the Owner, without being associated with the unsold the whole Sarusun.

¹⁸ Krishnapriya S and Greeshma Sarath, 'Securing Land Registration Using Blockchain', *Procedia Computer Science*, 171 (2020), 1708–15 <<https://doi.org/10.1016/j.procs.2020.04.183>>.

¹⁹ Abdul Kadir Jaelani, I. Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, 'Executability of the Constitutional Court Decision Regarding Grace Period in the Formulation of Legislation', *International Journal of Advanced Science and Technology*, 28.15 (2019), 816–23.

According to the author, even this rule of law does not provide a guarantee of legal certainty and justice, because the completeness of the documents at the time of submission of the first condominium unit is not easy to obtain. Moreover, the availability of these documents is also the domain of the Development Actors as developers who take care of them²⁰. In practice, many flats have been sold and occupied by the owners, but the deed of sale and purchase and SHM or SKBG for the condominium have not been issued or issued.

Based on the results of an interview with Ananda Yogi Wicaksono, the first submission as referred to by law cannot be carried out because the submission of SHMRS (Certificate of Ownership of Flats) is still in obstacles in the form of a permit or application process. SHMRS takes a very long and complicated time, resulting in the Sale and Purchase Deed not being able to be carried out. Therefore, the buyers feel they have paid for it, so he asks to occupy it. To overcome this, the Developers enter into an agreement with the Owner by means of handing over the loan and use until the SHMRS is finished and handed over to the owner of the flat. Thus, even though the Owner has actually occupied or inhabited, but has not been able to form a PPPSRS because it has not fulfilled the requirements as stipulated in the law. Thus, to ensure legal certainty and justice for the parties, it is necessary to revise or improve the law and its implementing regulations.

Third: a manager who is a legal entity, meaning that he is a legal subject who has a very important position and role in the legal field, especially civil law because the legal subject can have legal authority²¹. The term legal subject comes from the Dutch translation, namely *rechtssubject* or law of subject (English). In general, *rechtssubject* is defined as a supporter of rights and obligations, namely humans and legal entities. Meanwhile, according to A Ridwan Halim, what is included in the definition of legal subjects are: humans (*natuurlijke persoon*) and legal entities (*rechtspersoon*), for example PT. (Limited Liability Company), PN (State Company), Foundations, Government Agencies and so on.

In relation to the purpose of managing a legal entity, the law does not provide a limit on which legal entity is meant by the law. Article 1 number 17 of Law 20/2011 confirms that a legal entity is a legal entity established by Indonesian citizens whose activities are in the field of housing and settlement areas. Meanwhile, Article 75 paragraph (3) of PP 13/2011 confirms that the manager established or appointed by PPPSRS must be a legal entity, registered, and have a business license from the regent/mayor, specifically the Province of the Special Capital Region of Jakarta from the governor.

This provision, according to the author, provides flexibility for PPPSRS to form a manager who is a legal entity or appoints a manager who is a legal entity to manage the flats. By not limiting the type of legal entity, it opens equal opportunities for companies engaged in the management of flats as long as the

²⁰ Awaludin Marwan, Diana Odier Contreras Garduno, and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22–32 <<https://doi.org/10.20961/bestuur.v10i1.59143>>.

²¹ Dewi Nurul Savitria, 'Legal Policy on the Protection of the Right to Health during the Covid-19 Pandemic in France', *Bestuur*, 10.1 (2022), 1–11 <<https://doi.org/10.20961/bestuur.v10i1.64330>>.

company meets the requirements as referred to in Article 75 paragraph (3) of PP 13/2021. However, in its development, examining the provisions of Article 37 paragraph (1) and paragraph (2) of PMPU-PR 14/2021, confirms that PPPSRS can form a manager which is a Limited Liability Company (PT) Legal Entity.

In the author's opinion, the provisions regarding legal entities as referred to in Article 37 PMPU-PR 14/2021, which are only permitted by Limited Liability Companies (PT), such things clearly reduce the intent of managers who are legal entities as regulated in laws and regulations government, because these restrictions are not regulated. Therefore, this is contrary to the hierarchy of laws and regulations which emphasizes that the grading of each type of legislation is based on the principle that lower laws and regulations must not conflict with higher laws and regulations²². Supposedly, to ensure legal certainty and justice, the law stipulates that a legal entity that can manage flats is a legal entity established in accordance with the laws of the Indonesian nation and has complied with the requirements as stipulated in the law. Thus, all legal entities have equal opportunities in the management of flats.

However, apart from the above opinion, according to the author regarding the management of flats, what is appropriate or appropriate is a legal entity in the form of a foundation. Adapun is the reason why the author chooses the legal entity Foundation, because the Foundation is a legal entity that reflects the values of Pancasila in its operations²³. In addition, it is necessary to understand together that the characteristics of flats in Indonesia are vertical, the cultural culture of the residents tends to be individualistic and far from the culture of mutual cooperation, so that the cultural culture that develops in an individualistic apartment environment will erode the cultural values of Pancasila. which is a culture of gotong royong and community. Therefore, in order to maintain, preserve and actualize the Pancasila values in the apartment environment, the management of the apartment will be better if it is carried out by a legal entity Foundation.

Management of Flats with legal certainty and justice

The management of flats according to the law is carried out by the Development Actors during the transition period before the formation of the PPPSRS, and the management is carried out by the PPPSRS. As previously described, in the management of flats, disputes often arise between the Developers and the Owners or Occupants, due to unclear and unequivocal legal or regulatory rules, both at the statutory level and at government regulations and ministerial regulations or governor regulations²⁴.

²² I Gusti Ayu Ketut Rachmi Handayani, Lego Karjoko, and Abdul Kadir Jaelani, 'Model Pelaksanaan Putusan Mahkamah Konstitusi Yang Eksekutabilitas Dalam Pengujian Peraturan Perundang-Undangan Di Indonesia', *BESTUUR*, 7.2 (2020), 36 <<https://doi.org/10.20961/bestuur.v7i1.42700>>.

²³ Moh. Iqra Syabani Korompot, Sholahuddin Al-Fatih, and David Pradhan, 'The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant?', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021) <<https://doi.org/10.53955/jhcls.v1i3.13>>.

²⁴ A. Yoma Amanda Putri and Djauhari Djauhari, 'The Registration Of "Ulayat" Land In West Sumatra: Between The Legal Certainty And The Social Justice', *Jurnal Akta*, 5.3 (2018), 585 <<https://doi.org/10.30659/akta.v5i3.3170>>.

In addition, it is also due to the interests of the Development Actors to obtain economic benefits from the management of flats. The problems in managing flats that often occur include development actors in terms of providing facilities are not serious, there are even indications of efforts to stall for time, and are not transparent in the process of forming PPPSRS. The formation of PPPSRS is only a formality, meaning that after it is formed it is legalized and registered, then its power is delegated to the public manager, but the manager is part of the developer. The formation of PPPSRS is dominated by developers, so as a result the membership of PPPSRS is controlled by developers. Furthermore, the developer appoints a manager who is still under his control; that in the formation of PPPSRS the manager always tries to get more votes by intimidating the owners present or holding the power of attorney to attend and procrastinating so that the owners or power of attorney holders feel bored and leave the meeting. So that at the time of voting to determine the membership of the PPPSRS, it is filled with more from the Development Actors. Thus, the PPPSRS is controlled by the Development Actors who can finally determine the parties who are the managers of the flats which in its implementation will indirectly provide benefits to the Development Actors. Determination of the amount of service charge, electricity bill, Environmental Management Fee (IPL), is not transparent, so it is very burdensome for owners or residents; The developer deliberately did not sell all the apartment units, and the apartment units that were not sold were commercialized, namely being rented out for supermarkets, and also to increase the value of NPP so that they could control the building (management).

Taking into account these issues, efforts are being made to realize legal certainty and justice, among others, the need for re-arrangements both in terms of provisions for the management of flats, and threats of sanctions and their enforcement so that Owners and Developers carry out their obligations in accordance with the law²⁵. For this reason, the provisions regarding the regulation of PPPSRS, the transition period, the first handover of the condominium unit to the owner, and the subject of the legal status of the manager who is a legal entity, as well as the sanctions provisions contained in Article 107 and Article 108 regarding administrative sanctions and the number of fines must be normalized again. clearly and unequivocally²⁶.

In addition, in addition to the efforts made through the reconstruction of the law, it is also necessary to have good faith from the Development Actors in providing support for facilities for the formation of PPPSRS, and also in carrying out management it must be transparent and open, especially in determining the amount of service charge, electricity bills, Environmental Management Fees (IPL),

²⁵ Lalu Nuzul Indrawan, Arba, and Aris Munandar, 'JURIDICIAL REVIEW IMPLEMENTATION OF LAND REGISTRATION ACCORDING TO GOVERNMENT REGULATION NO. 18 OF 2021 CONCERNING MANAGEMENT RIGHTS, LAND RIGHTS, FLAT UNITS AND LAND REGISTRATION', *POLICY, LAW, NOTARY AND REGULATORY ISSUES (POLRI)*, 1.1 (2021), 39–56 <<https://doi.org/10.55047/polri.v1i1.27>>.

²⁶ Landya Maria Simatupang, Imam Koeswahyono, and Bambang Sugiri, 'Legal Certainty and Legal Benefit on the Implementation of Laws Article 43 Regarding Flats Number 20 of 2011: Empirical Study on Developer Company Located in South Jakarta', *European Researcher*, 8.4 (2017), 313–20 <<https://doi.org/10.13187/er.2017.4.313>>.

and so on. So that with transparency and onness as well as deliberation and consensus, in determining matters related to the management of flats, there will be no sense of suspicion for the Owners or Tenants of the Development Actors. Thus, the objectives of organizing PPPSRS flats and managing flats with legal certainty and justice will be realized.

Conclusion

From the results of the studies described above, it can be concluded which are basically as follows whereas the regulation of PPPSRS in the management of flats has not been able to provide legal and fair certainty for the Owner or Tenant, because there is a difference in the meaning of the provisions of Article 59 with the explanation of Article 59 of Law 20/2011, namely in defines the phrase "mass " transition", and "first handover of the apartment unit to the Owner". This difference in practice causes problems (disputes), between the Development Actors and the Owners or Tenants of the Flats, especially in the formation of PPPSRS and the management of flats. In the case of the formation of PPPSRS, Development Actors in terms of providing facilities are not serious, it is indicated that there are efforts to stall for time, are not transparent, and seem formal, and dominate the process of forming PPPSRS, so that in the end the Development Actors can control and determine the parties who become the manager of the apartment which in its implementation will indirectly provide benefits to the Developer. In terms of the management of flats, the Developers are not transparent and open in determining management costs, especially in determining the amount of service charge, electricity bill, Environmental Management Fee (IPL), and others, so that it is very burdensome and detrimental to the Owner or Tenant.

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